SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 380.

THE UNITED STATES, APPELLANT,

vs.

THE OFFICERS AND CREW OF THE U. S. S. "MANGROVE."

FILED AUGUST 8, 1900.

No. 445.

THE OFFICERS AND ENLISTED MEN OF THE U. S. SHIPS "NEW YORK," "INDIANA," AND WILMINGTON," APPELLANTS,

vs.

THE OFFICERS AND CREW OF THE U. S. S. "MANGROVE."

FILED OCTOBER 13, 1900.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

INDEX.

	Original.	Print.
Libel	1	1
Attachment and monition issued and returned	2	1
Standing interrogatories	4	2
Testimony in preparatorio	7	6
Testimony of Ramon Burgas	7	6
Gaspar Thompson	14	10
Manuel Quevedo	21	13
Gabriel Reyan	29	17
Decree of condemnation	30	18
Claim of the U. S. S. "Mangrove"	34	19
Report of prize master	35	20
Affidavit of prize master	36	20

	Original.	Print.
Claim of the U. S. S. "Maugrove"—Continued.		
Interrogatories	37	21
Deposition of A. F. Olssen	38	22
A. Chipchase	40	23
W. W. Ralston	42	24
John Peterson	45	25
John Hansen	47	26
Joseph Clinton	49	27
J. H. Dayton	51	28
Paul Schmitt	54	29
W. H. Everett	56	30
L. C. Palmer	59	32
P. L. Cosgrove	63	34
Claims of the U. S. S. "Indiana"	66	35
Claim of "Indiana"	66	35
Claim of "Indiana"	69	37
Interrogatories	70	37
Deposition of W. G. Cassard	71	38
B. C. Decker	73	39
W. C. Dawson	75	41
C. E. Murray	78	42
Certified copy log "Indiana"	81	43
Claim of the U. S. S. "Wilmington"	84	44
Interrogatories	85	45
Deposition of C. C. Todd	86	45
C. Bailey	88	46
A. C. Almy	90	47
Claim of the U. S. S. "New York"	92	48
Petition of "New York"	93	49
Interrogatories	95	50
Deposition of H. C. Mustin	96	51
Report of prize commissioner	99	52
Opinion	102	53
Decree of distribution	112	59
Assignment of errors on part of United States	113	59
Notice and prayer of appeal by United States and allowance	114	60
Order extending time to file record	115	61
Clerk's certificate to transcript	117	61
Notice of appeal of officers, etc., of "New York," "Indiana," and "Wilmington"	119	62
Assignment of errors on behalf of officers, etc., of "New York," "Indiana," and "Wilmington"	120	62
Petitition of appeal on behalf of officers, etc., of "New York," "Indiana," and "Wilmington"	122	63
Order allowing appeal on behalf of officers, etc., of "New York," "Indiana," and "Wilmington"	123	64
Bond on appeal on behalf of officers, etc., of "New York," "Indiana," and "Wilmington"	124	64
Stipulation as to record	126	66
Clerk's certificate to transcript	128	67
Citation on appeal of officers, etc., of "New York," Indiana," and "Wilmington"	129	68
Stipulation and addition to record	132	68
Deposition of Oscar D. Duncan	134	69

1 In the district court of the United States, southern district of Florida.

UNITED STATES OF AMERICA
vs.
THE STEAMER "PANAMA." } Prize.

To the Honorable James W. Locke, judge of the district court of the United States for the southern district of Florida.

The libel of Joseph N. Stripling, attorney of the United States for the southern district of Florida, who libels for the United States and for all parties in interest against the steam vessel "Panama," her tackle, apparel, furniture, and cargo, in a cause of prize, alleges:

That pursuant to instructions from the President of the United States, William H. Everett, Lt. Commander of the United States Navy, in and with the United States ship of war the "Mangrove," her officers and crew, did, on the 25th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas, as prize of war, the said steam vessel "Panama," with valuable cargo on board the same; and that the ship and cargo have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this court; and that the said vessel and cargo are lawful prize of war, and subject to be condemned and forfeited to the United States as such.

Wherefore the said attorney prays that all persons having or claim-
2 ing any interest in said vessel or cargo may, by the proper process of this court, be duly notified of the allegations and prayers of this libel, and cited to appear and claim same; that the nature, amount, and value of said cargo be determined; and that on proper proofs being taken, and all due proceedings being had, the said "Panama," together with her tackle, apparel, furniture, and cargo, may, on the final hearing of this cause, by the definitive sentence and decree of this court, be condemned, forfeited, and sold as a prize of war and the proceeds distributed according to law.

J. N. STRIPLING,
U. S. Attorney, S. D. of Florida.

Let attachment and monition issue as prayed, returnable Wednesday, day of 11th May, A. D. 1898, at 10.30 o'clock a. m.

Entered as of course.

E. O. LOCKE, *Clerk*,
By J. OTTO, *Dy. Clerk.*

Whereupon attachment was issued to the marshal as ordered, commanding him to seize and take into his custody said steam vessel "Panama" and her cargo, and same to safely keep to abide the further order of this court; which attachment was by him afterwards returned duly executed, and with his return thereon indorsed is in the clerk's office, on file.

Also monition was issued to the said marshal, commanding him to cite
3 and admonish all persons whomsoever having, or pretending to have, any right, title, claim or interest in or to the said vessel, the "Panama," or her cargo, to be and appear before our admiralty

court, held in Key West, in said district, on the 11th day of May, A. D. 1898, to show cause, if any they have, why said vessel should not be condemned as prize.

Which said monition was by the marshal afterwards returned duly executed and with his return endorsed thereon is on file in said clerk's office.

(Endorsed:) Libel. Attachment and monition. Filed Apr. 26, 1898. E. O. Locke, clerk.

4 *Standing interrogatories established by the district court of the United States for the southern district of Florida, to be administered in prize causes in said court, to all persons who may be produced as witnesses to be examined in preparatorio.*

1st interrogate. What is your name, where were you born, and where have you lived for the last seven years? Where do you now live, and how long have you lived in that place? To what prince or State, or to whom are you, or have you ever been, a subject? Are you a married man; and if married, where do your wife and family reside?

2d interrogate. Were you present at the time of taking and seizing the ship, or her lading, or any of the goods or merchandise concerning which you are now examined? Had the ship concerning which you are now examined any commission; what, and from whom?

3d interrogate. In what place, latitude, or part, and when was the said ship and goods concerning which you are now examined taken and seized? Upon what pretence and for what reasons were they seized? Into what port were they carried, and under what colors did the ship sail? What other colors had you on board, and for what reason had you such other colors? Was any resistance made at the time when the said ship was taken; and if yea, how many guns were fired, and by whom, and by what ship or ships were you taken? Was the ship or vessel by which you were captured a ship of war, or a vessel, acting without any commission, as you believe? Were any other and what ship in sight at the time of the capture?

4th interrogate. What is the name of the master or commander of the ship or vessel taken? How long have you known the said master, and who appointed him to the command of said vessel? Where did said commander take possession of her, at what time, and what was the name of the person who delivered the possession to the said master? Where doth he live? Where is the said master's fixed place of abode, and where doth he generally reside? How long has he lived there, where he was born, and of whom is he now a subject? Is he married; if yea, where does his wife and family reside?

5th interrogate. Of what burden is the vessel which has been taken? What was the number of her mariners, and of what country were the said seamen and mariners? Did they all come on board at the same port, or at different ports, and who shipped or hired them, and when and where?

6th interrogate. Had you or any of the officers or mariners belonging to the ship or vessel concerning which you are now examined any, and what, part, share, or interest in the said vessel or her lading. If yea, set forth who and what goods or interest you or they have. Did you belong to

the said vessel at the time she was seized and taken? In what capacity did you belong to her? How long have you known her? When and where did you first see her, and where was she built?

7th interrogate. What is the name of the vessel? How long has she been so called? Do you know of any other name or names, and what are they, by which she has heretofore been called? Had she any passport or sea chart on board, and from whom? To what ports and places did she sail during her said voyage, before she was taken? Where did her last voyage begin and where was the said voyage to have ended? From what port, and at what time, particularly from the last clearing port, did the said ship sail previously to the capture? Set forth all the ports to which she has sailed, and at which she has touched and traded, during her whole voyage out and home.

8th interrogate. What lading did the said vessel carry at the time of her first setting sail on her last voyage, and what sort of lading and goods had she on board at the time she was taken? When was the same put on board? Set forth the different species of lading and the quantity of of each sort. Has any part of the cargo of said vessel been unladen since the commencement of her original voyage? If so, at what ports or places was it unladen? State the articles which were unladen.

9th interrogate. Who were the owners of the vessel at the time when she was seized? How do you know that they were owners at that time? Of what nation or country are such owners by birth? Where do they reside, and where do their wives and families reside? How long have they resided there? Where did they reside before, to the best of your knowledge? To whom are they subject? How long have the present owners been in possession, and of whom did they purchase?

10th interrogate. Was any bill of sale made, and by whom, to the aforesaid owners of said vessel; and if any such were made, in what month and year, and where and in the presence of what witnesses? Was any and what engagement entered into concerning the purchase, further than appears on the bill of sale? If yea, was it verbal or in writing? Where did you last see it, and what has become of it?

11th interrogate. Was the said lading put on board at one port and at one time, or at several ports and at several times, and at what ports by name? Set forth what quantities of each sort of goods were shipped at each port.

12th interrogate. What are the names of the respective laders or owners or consignees of said goods? What countrymen are they? Where do they now live and carry on their business? How long have they resided there? Where did they reside before, to the best of your knowledge? And were the said goods to be delivered, and for whose real account, risk, or benefit? Have any one of the said consignees or shippers any, and what, interest in the said goods? If yea, whereon do you found your belief that they have such interest? Do you verily believe that at the *at the* time of the lading the cargo, and at the present time, and also if said goods shall be restored and unladen at the destined port, the goods did, do, and will belong to the same persons and to none others?

5 13th interrogate. How many bills of lading were signed for the goods seized on board the said ship? Were any of those

bills of lading false or colorable, or were any bills of lading signed which were different in any respect from those which were on board the ship at the time she was taken? What were the contents of such other bills of lading, and what became of them?

14th interrogate. Are there in the United States of America any bills of lading, invoices, letters, or instruments relative to the ship and goods concerning which you are now examined? If yea, set forth where they are, and in whose possession, and what is the purport thereof, and when they were brought or sent to the United States.

15th interrogate. Was there any charter party signed for the voyage in which the ship concerning which you are now examined was seized and taken? What became thereof? When, where, and between whom was such charter party made? What were the contents of it?

16th interrogate. What papers, bills of lading, letters, or other writings were on board the ship at the time she took her departure from the last clearing port before her being taken as prize? Were any of them burnt, torn, thrown overboard, destroyed or cancelled, or attempted to be concealed, and when, and by whom, and who was then present?

17 interrogate. Has the ship concerning which you are now examined been at any time, and when, seized as a prize and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned.

18th interrogate. Have you sustained any loss by the seizing and taking the ship concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction, or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when, and from whom?

19th interrogate. Is the said ship or goods, or any, and what part, insured? If yea, for what voyage is such insurance made, and at what premium, and when, and by what persons, and in what country was such insurance made?

20th interrogate. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any other person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

21st interrogate. Let each witness be interrogated of the growth, produce, and manufacture of what country and place was the lading of the ship or vessel concerning which you are now examined, or any part thereof.

22d interrogate. Whether all the said cargo, or any, and what part thereof, was taken from the shore or quay, or removed or transhipped from one boat, barque, vessel, or ship, to another. From what and to what shore, quay, boat, barque, vessel, or ship, and when and where was the same so done?

23d interrogate. Are there in any other country, and where, or on board any and what ship or ships, vessel or vessels, other than the ship and vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers, or documents, relative to the said ship or vessel, and cargo, and of what nature are such bills of lading,

invoices, letters, instruments, papers, or documents, and what are the contents? In whose possession are they, and do they differ from any of the papers on board, and in what particular do they differ?

24th interrogate. Were any papers delivered out of the said ship or vessel, and carried away in any manner whatsoever? And when, and by whom, and to whom, and in whose custody, possession, or power do you believe the same now are?

25th interrogate. Was bulk broken during the voyage in which you were taken, or since the capture of the said ship? And when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

26th interrogate. Were any passengers on board the aforesaid ship? Were any of them secreted at the time of the capture? Who were the passengers, by name? Of what nation, rank, profession, or occupation? Had they any commission? For what purpose and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which, of the passengers any, and what, property or concern or authority, directly or indirectly, regarding the ship and cargo? Were there any officers, soldiers, or mariners secreted on board, and for what reason were they secreted? Were any of the citizens of the United States on board, or secreted or confined, at the time of the capture? How long and why?

27th interrogate. Were and are all the passports, sea briefs, charter parties, bills of sale, invoices, and papers which were found on board entirely true and fair? Or are any of them false or colorable? Do you know of any matter or circumstances to affect their credit? By whom were the passports or sea briefs obtained, and from whom? Were they obtained for this ship only? And upon the oath or affirmation of the persons therein described, or were they delivered to or on behalf of the person or person' who appear to have been sworn or to have affirmed thereto, without their ever having, in fact, make any such oath or affirmation? How long time were they to last? Was any duty or fee payable and paid for the same? And is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed and how often? And has the duty or fee been paid for such renewal? Was the ship in a port in the country where the passports and sea briefs were granted? And if not, where was the ship at the time? Had any person on board any let-pass or letters of safe-conduct? If yea, from whom and for what business? Had the said ship any license
6 or passport from any foreign power or authority during the voyage? If so, state from whom been obtained, and for what purpose and use.

28th interrogate. Have you written or signed any letters or papers concerning the ship and her cargo other than those found on board and delivered to her captors? If yea, what was their purport, to whom were they written and sent, and what is become of them?

29th interrogate. Towards what port or place was the ship steering her course at the time of her being first pursued and taken? Was her course altered upon the appearance of the vessel by which she was taken? Was her course at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship's

papers? Was the ship, before or at the time of her capture, sailing beyond or wide of the said place or port to which she was so destined by the said ship's papers? At what distance was she therefrom? Was her course altered at any, and what, time, and to what other port or place, and for what reason?

30th interrogate. By whom and to whom hath the said ship been sold or transferred, and how often? At what time and at what place, and for what sum or consideration, hath such sum or consideration been paid or satisfied? Was the sum paid or to be paid a fair and true equivalent? Or what security or securities have been given for the payment of the same, and by whom, and where do they live now? Do you know or believe in your conscience such sale or transfer has been truly made, and not for the purposes of covering or concealing the real property? Do you verily believe that if the ship should be restored she would belong to the persons now asserted to be the owners, and to none others?

31st interrogate. What guns were mounted on board the ship and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other, and what, arms and ammunition, and when and where they put on board? And by whom or by what authority, or for what purpose or destination, and on whose account were they put on board?

32d interrogate. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the ship and cargo concerning which you are now examined at the time of the capture?

7 UNITED STATES OF AMERICA.

In the district court of the United States in and for the southern district of Florida. In admiralty.

THE UNITED STATES OF AMERICA }
vs. } Prize.
SPANISH STEAMSHIP "PANAMA." }

Deposition of RAMON BURGAS, a witness produced, sworn, and examined in preparatorio on the 11th day of May, A. D. 1898, at the U. S. court-house in Key West, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida; the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the "Panama."

1. To the first interrogatory deponent answers:

My name is Ramon Burgas. I was born in Barcelona, Spain, and have lived there for the last seven years. I have lived there all my life. I am a subject to Spain. I am not a married man.

2. To the second interrogatory deponent answers:

I was in my office on board the ship when she was captured. She had commission as a royal mail ship from the Spanish Government.

3. To the third interrogatory deponent answers:

I do not know where the ship was when she was captured. We were captured on a pretense of war which existed between Spain and the United

States. She sailed under the Spanish flag, and was brought into the port of Key West. We had no other colors on board. There was no resistance. We were captured by the U. S. S. "Mangrove;" she was
8 a ship of war. At the time of the capture there were two war ships in distance. I could not see the body of the ships, but could see their towers. Afterwards we steamed up to the war ships with the "Mangrove," and found that the ships were the "Indiana" and the "Wilmington."

4. To the fourth interrogatory deponent answers:

The master of the captured ship is Manuel Quevedo. I have known him since Dec., 1897. I do not who appointed him, for when I entered the ship he was already there as captain. I do not know where or when he took possession of the ship or who delivered the possession to him. The master lives in Cadiz, which is fixed place of abode. I do not know how long he has lived there or where he was born, but I believe he is from the Canary Islands, and that he is a subject of Spain. He is married. His family lives in Cadiz.

5. To the fifth interrogatory deponent answers:

The vessel is of 1,432 registered tons. She has 71 mariners, including the captain, who are all Spanish. They all came on board at Havana, Cuba. They were shipped by the agents of the company at Havana, at different times.

6. To the sixth interrogatory deponent answers:

Neither myself nor any of the officers or the mariners had any interest in the vessel or the cargo. I belonged to the vessel in the capacity of supercargo at the time she was captured. I have known the ship about four years. I first saw her in Havana. She was built in England.

7. To the seventh interrogatory deponent answers:

The name of the vessel is the "Panama." She has been called the "Panama" ever since I knew her. She had no passports or sea
9 charts that I know of. On the voyage before we were captured the vessel sailed from Havana to New York. The last voyage began in Havana, and was to have ended in Vera Cruz—round trip by way of New York. The vessel last sailed from New York on the 20th day of April, A. D. 1898, at 1.30 p. m. On our last voyage we started from Havana for New York; after leaving New York for Havana we were captured.

8. To the eight' interrogatory deponent answers:

At the time of first setting sail we had on board a cargo of sugar and tobacco and old metal. When we were captured we had on board a cargo, general, which was taken on at New York. The cargo was taken on board from the 18th to the 20th of April, 1898. The manifest will set forth the quantity of each sort; I do not now remember. The original cargo was unladen at New York. No part of the cargo taken on at New York has been unladen since the commencement of the voyage. A portion was taken out by the U. S. marshal under orders from the court. Potatoes, eggs, lard were taken out to be sold as perishable cargo.

9. To the ninth interrogatory deponent answers:

The owners at the time of the capture were the Spanish Trans-Atlantic Company. I know they were the owners because I have received no notice to the contrary, and all the orders are from them. They are

Spaniards. The' reside at Barcelona. They are subjects of Spain. I do not know how long they have been in pos'session or from whom they purchased.

10. To the 10th interrogatory deponent answers:

I do not know anything about any bill of sale.

11. To the 11th interrogatory deponent answers:

The landing was placed on board at one time at the port of New York.

10 12. To the 12" interrogatory deponent answers:

I do not know the laders or consignees. The goods were to be delivered at Havana, Progresso, and Vera Cruz at the risk of the shippers. I believe that if the said cargo had been delivered at the port of destination that the said cargo would have belonged to the same persons and to none others.

13. To the 13" interrogatory deponent answers:

I do not know how many bill' of lading were signed for those goods. None of them were false.

14. To the 14" interrogatory deponent answers:

At the agents' in New York I believe that there are copies of all bills of lading relative to the cargo.

15." To the 15th interrogatory deponent answers:

There was no charter party.

16. To the 16th interrogatory deponent answers:

All of the papers of every description that were on the ship were delivered to the prize master at the time we were captured. None of them were burnt, torn, thrown overboard, cancelled, or concealed.

17. To the 17" interrogatory deponent answers:

The ship has never before been captured and condemned as prize before this time.

18. To the 18" interrogatory deponent answers:

I have sustained no loss by the taking and capture of this ship. I have not received any promise of indemnity for any loss which I have sustained or may sustain.

11 19. To the 19" interrogatory deponent answers:

I do not know whether or not the said ship or cargo is insured.

20. To the 20" interrogatory deponent answers:

I believe the cargo would, upon its having been unladen in its port of destination, *would* have become the property of the consignees and to none others.

21. To the 21" interrogatory deponent answers:

The cargo was produced and grown in the United States.

22. To the 22" interrogatory deponent answers:

All of the cargo was taken from the wharf at the port of New York.

23. To the 23" interrogatory deponent answers:

Bills of lading I believe to be in the U. S. copies of the original found on board the ship. They do not differ from those found on board the ship.

24. To the 24th interrogatory deponent answers:

The only papers delivered out of the ship were delivered to the prize officer. I believe they are now in the possession of the prize commission.

25. To the 25″ interrogatory deponent answers:

The bulk of the cargo was not broken before the capture. But it had been broken in the port of Key West by the U. S. marshal.

26. To the 26″ interrogatory deponent answers:

There were passengers on board. There were no passengers
12 secreted. I do not know them by name. They are Spaniards. I do not know their rank, profession, or occupation. I do not know if any of them had a commission. They were taken on board at New York. Twenty-eight were for Havana and one for Vera Cruz. None of the passengers were concerned in the ship. There were no officers, mariners, or soldiers secreted on board. There were no citizens of the United States on board.

27. To the 27″ interrogatory deponent answers:

All of the papers found on the boat, as far as I know, are true and correct. I know of no matter or thing which would affect their credit. The papers were obtained for this ship alone. The ship had only a license from the custom-house at New York and the Spanish papers.

28. To the 28″ interrogatory deponent answers:

I have written no letters or papers since I was captured.

29. To the 29″ interrogatory deponent answers:

The ship was steering her course towards Havana when she was captured. Her course was not altered upon the appearance of the capturing vessel. Her course was always directed toward Havana. She was not sailing wide beyond her point of destination. Her course was altered after capture and she was brought into the port of Key West, where she now is. We were 25 miles from Havana when we were captured.

30. To the 30″ interrogatory deponent answers:

I know nothing about any sales or transfers of this ship. I believe that if the ship should be restored she will belong to the persons now asserted to be the owners, and to none others.

31. To the 31″ interrogatory deponent answers:

13 Two breach-loading 9 centimeters Hontoria guns, one Maxiom rapid-fire guns, and two saluting guns were mounted on deck. Revolvers, guns, swords, and am'unition for the same. Sixty rounds of am'unition for the cannon. She was armed in accordance with the contract with the Spanish Government. All mail ships must be armed.

32. To the 32″ interrogatory deponent answers:

I have already stated in my answers in the foregoing all that I know or believe concerning the true property and destination of the ship and cargo.

ROMAN BURGAS.

Sworn to and subscribed before me May 11″, 1898.

WINN, *Comdr. U. S. N. Prize Commission.*

14 In the district court of the United States in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
THE SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of GASPAR THOMPSON, a witness produced, sworn and examined in preparatorio, on the 12th day of May, A. D. 1898, at the U. S. court-house, Key West, in said district, on the standing interrogatories, established by the district court of the United States for the southern district of Florida; the said witness having been produced for the purpose of such examination, in behalf of the captors of a certain ship or vessel called the "Panama."

1. To the first interrogatory deponent answers:

My name is Gaspar Thompson. I was born at Cadiz, Spain. For the last seven years I have been going to sea. I claim Cadiz as my home. Since 1895 I have been a Spanish subject. Previous to that I was a subject of England. I am not married.

2. To the second interrogatory deponent answers:

I was present at the time of the capture of the "Panama." The ship is a regular Spanish mail steamer.

3. To the third interrogatory deponent answers:

The ship was taken about twenty miles from Havana, Cuba, at about 15 minutes to 6 o'clock p. m., on the 25th day of April, A. D. 1898.

15 We were captured on account of the war which existed between Spain and the United States. She was carried into the port of Key West. She flew the Spanish flag. I do not know that we had any other colors. We made no resistence at the time. We were captured by the U. S. S. "Mangrove." The ship that captured us was a ship of war. I believe the U. S. S. "Indiana" and another ship were in sight. I was chief engineer of the "Panama" and my duties demanded my presence below, so I am not prepared to state positively as to time we sighted the other ships.

4. To the fourth interrogatory deponent answers:

The captain's name is Manuel Quevedo. I have known him for 13 years and he was appointed to the command of the "Panama" by the Spanish Trans-Atlantic Company. She was delivered to the captain in Havana about 18 months ago by Capt. Angel Cascaro. The captain of the ship lives in Cadiz. His fixed place of residence is Cadiz and he usually resides on board his boat. I do not know how long he has lived in Cadiz, but he was born in the Canary Island' and is a subject of Spain. He is a married man. His wife and family live in Cadiz.

5. To the fifth interrogatory deponent answers:

I do not know the tonnage of the vessel. The ship has, all told, seventy-one mariners, all Spaniards. They all came on board at Havana at different times. The agent of the company at Havana hired the mariners except the officers.

6. To the sixth interrogatory deponent answers:

None of the officers or mariners had any interest in the vessel or cargo. I belonged to the "Panama" at the time she was taken, in the capacity

of chief engineer. I have known the vessel for 18 years. I first saw her in Santander in 1882. She was built in Glasgow.

16 7. To the seventh interrogatory deponent answers:

The name of the vessel is the "Panama." She has been called by that name ever since I knew her. I do not know if she has a passport or a sea chart. We started out from New York on the voyage before we were taken, and intended to touch at Havana, Vera Cruz, and Progresso, thence back to New York, touching at the same ports. We were captured on our way out of New York. We cleared from New York at about 2 p. m. on the 20th day of April, 1898; we were captured on the 25th day of April, 1898, while we were bound for Havana.

8. To the eight' interrogatory deponent answers:

I am chief engineer of the boat and do not keep account of the cargo. I do not know what she was loaded with. Some of the cargo was unloaded at Key West. I do not know the articles which were unladen.

9. To the ninth interrogatory deponent answers:

The Spanish Trans-Atlantic Company, represented by the Marquis Comillas. I am employed by them and have no notice to the contrary that they do not now own the vessel. They are all Spanish subjects to the best of my knowledge. I can not tell where they all live or where their families live. They are subjects of the King of Spain. The present owners have been in pos'ession of said vessel since the year 1896. They purchased the said vessel from the Marquis of Campos Company.

10. To the tenth interrogatory deponent answers:

I do not know anything about any bills of sale or transfers as before stated.

11. To the 11th interrogatory deponent answers:

17 The cargo was all put on board at one port at one time, at New York.

12. To the 12" interrogatory deponent answers:

I do not know anything about the laders or consignees. I do not know their names, or their place of abode, or their nationality.

13. To the 13" interrogatory deponent answers:

I do not know anything about any bills of lading.

14. To the 14th" interrogatory deponent answers:

I do not know anything about any bills of lading.

15. To the 15th interrogatory deponent answers:

I do not know anything about a charter party being signed for that voyage.

16. To the 16" interrogatory deponent answers:

I do not know what papers, letters, or writings were on board the ship at the time we set sail. I do not know of my own knowledge or otherwise that any of them were destroyed, burnt, or concealed.

17. To the 17" interrogatory deponent answers:

Previous to this seizure the ship has never been seized or condemned as a prize.

18. To the 18" interrogatory deponent answers:

If the ship is not returned, I will loose my wages and my situation. I have not received any indemnity or promise of indemnity for any loss which I have sustained or may sustain by reason of the capture of this ship.

18 19. To the 19″ interrogatory deponent answers:

I do not know whether or not the cargo is insured, but the ship is insured in Lloyds.

20. To the 20″ interrogatory deponent answers:

I do not know anything about the ownership of the cargo.

21. To the 21″ interrogatory deponent answers:

I do not know where the cargo was produced or where it was grown, but I believe they came from the United States.

22. To the 22″ interrogatory deponent answers:

The cargo was taken from the wharf in New York about the 18″ of April to the 20″ day of April, 1898.

23. To the 23″ interrogatory deponent answers:

I do not know anything about any bills of lading or passports relative to the cargo and ship.

24. To the 24″ interrogatory deponent answers:

After the capture of the ship some papers were turned over to the prize master by the captain. I believe that they are now in the possession of the prize commissioners.

25. To the 25″ interrogatory deponent answers:

None of the cargo was taken out on the voyage, but since we arrived at Key West some of the cargo was taken out by the U. S. marshal within the last week.

26. To the 26″ interrogatory deponent answers:

19 There were passengers on the ship. None of them were secreted at the time of capture. I do not know their names. They are all Spaniards except two—one is a Frenchman and one is a Mexican. I do not know their profession or occupation. I do not know if any have a commission. They were taken on board at New York on the 20″ day of April, 1898. They were going to Havana and Vera Cruz, business unknown to me. None of the passengers had any authority over the ship or cargo as far as I know of. There were not any officers, soldiers, or mariners on board the ship as far as I know. There were no citizens of the United States on board or secreted or confined as far as I know.

27. To the 27″ interrogatory deponent answers:

I do not know anything about any of the papers of or concerning the ship or cargo.

28. To the 28″ interrogatory deponent answers:

I have not written any letters or signed any papers relative to the ship or her cargo.

29. To the 29″ interrogatory deponent answers:

The ship was steering towards the port of Havana at the time she was pursued and taken. I do not think the course was changed at the appearance of the capturing ship. Her course as far as I know was at all times directed toward the port as shown by the ship's papers. She was not at any time sailed beyond or wide of her port of destination, as far as I know. After her capture her course was altered and she was brought into the port of Key West by the "Mangrove."

30. To the 30″ interrogatory deponent answers:

20 I do not know anything about any bill of sale or transfer of the ship except as before stated. If the ship were released, I believe she would belong to the persons now said to be the owners.

31. To the 31″ interrogatory deponent answers:
There were two breach-loading Hontorio 9-centimeter guns, one one each side mounted. Two small brass saluting guns and one Maxim rapid-firing gun; a number of rifles, cutlasses, revolvers, and ammunition for the same. I do not know the exact number or the exact amount of ammunition—I think 38 or 40 charges for the big guns. This armament is required by the Spanish law for all mail steamers. I do not know if there were any other arms or ammunition on board.

32. To the 32 interrogatory deponent answers:
I have already stated all that I know concerning the true property and destination of the ship and cargo, concerning which I am now being examined.

GASPAR THOMPSON.

Sworn to and subscribed before me May 12″, 1898.

WINN,
Comdr. U. S. N., U. S. Prize Commissioner.

21 In the district court of the United States, in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMER "PANAMA." } Prize.

Deposition of MANUEL QUEVEDO, a witness produced, sworn, and examined in preparatorio, on the 11″ day of May, A. D. 1898, at the U. S. court-house, Key West, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the "Panama."

1. To the first interrogatory deponent answers:
My name is Manuel Quevedo. I was born in Las Palmas, Canary Islands. I have lived during the last seven years in Santander and Cadiz, Spain; four years in Cadiz; I live there now. I am a subject of Alphonso XIII, King of Spain. I am a Spaniard. I am a married man, and my family live at Cadiz, Spain.

2. To the second interrogatory deponent answers:
I was present at the time of the capture of the "Panama." The said ship had a commission royal patent from the Spanish Government by the Queen of Spain.

3. To the third interrogatory deponent answers:
The said ship and cargo was taken about 25 miles from the Morro Castle, Havana, Cuba, north latitude 23–21″, longitude 75–47′.

22 The U. S. S. "Mangrove" steered towards us at 5.40 on the 25th day of April, 1898. At 5.50 the first shot was fired by the "Mangrove." After the first shot I stopped the ship. When the officer came on board he told me that the "Panama" was a prize because Spain had declared war against the United States. We were carried into the port of Key West. The ship flew the Spanish flag. We made no

resistance at the time of capture. Two shots were fired by the "Mangrove." My ship was captured by the "Mangrove." The ship that captured my vessel I believe to be a war ship. There were two ships in sight at the time we were captured. Afterwards I was informed that one was the "Indiana" and one was the "Wilmington." I first saw the "Mangrove"—that was at 5.30 p. m.—and shortly afterwards I saw the towers of the other ship.

4. The name of the master of the captured ship is Manuel Quevedo, myself. The Trans-Atlantic Company gave me possession of said ship. I took command of her in Havana, 28″ day of Sept., 1896. The name of the person whom delivered possession to me was Manuel Calvo, agent and vice-president of the company. He lives in Havana, Cuba.

5. To the fifth interrogatory deponent answers:

The tonnage of the vessel is over 1,300 tons; I do not remember the exact number. We had seventy-one mariners, including myself. They are all Spaniards. They were all shipped at Havana. The company hired them at different times.

6. To the sixth interrogatory deponent answers:

Neither myself or any of the officers or mariners have any interest in the ship or cargo. I belong on board the vessel in the capacity of master. I have known the vessel about 15 years. I do not know where she was built. She was built in England, I believe.

23 7. To the seventh interrogatory deponent answers:

The vessel is named the "Panama." She has been called the "Panama" about 15 years. I do not know that she has ever been called by any other name. The ship has a collection of sea charts and a royal patent. The voyage of the ship usually commences at New York and ends at Vera Cruz. Before we were captured we had sailed from Havana to New York. We were on our way from New York to Havana when we were captured. We sailed from New York, which is the last place that we cleared from before we were captured.

8. To the eighth interrogatory deponent answers:

On our trip from Havana to New York on our last voyage we had on board a cargo of sugar and tobacco. On our voyage from New York to Havana, when we were captured we had on board a general cargo. The same was put on board between the 18″ day of April and 20″ day of April, A. D. 1898. We had on board a general cargo. I can not set forth the quantity of each sort. A part of the cargo was unladen at the port of Key West; nowhere else. A part of the cargo unladen at Key West were lard, eggs, potatoes, and onions.

9. To the ninth interrogatory deponent answers:

At the time the vessel was seized she was owned by the Spanish Trans-Atlantic Company. I have no notice to the contrary, and they are the owner' now and at the time she was captured. If the ownership had been changed I would have been informed of the change. The owners by birth are Spaniards. They reside with their families at Madrid, Barcelona, and Cadiz. I do not know how long they have resided in said places. I do not know where they resided before. They are all subjects of Spain. The present owners of the "Panama" have been in possession about 13 years. They purchased her from the Marquis de Campos.

24 10. To the tenth interrogatory deponent answers:

I do not know anything about a bill of sale being made for this vessel.

11. To the eleventh interrogatory deponent answers:

All of the cargo was put on board at New York from the dock at New York between the 18", 19", and 20" days of April, A. D. 1898.

12. To the 12" interrogatory deponent answers:

I do not know the names of the shippers or the consignees of the cargo; the manifest will show it. I do not know what country they belong to. The goods were to be delivered in Havana, Progresso, and Vera Cruz, and I do not know for whose account, risk, or benefit. I do not know who the cargo belonges to or anything about it. I believe that in case the cargo is released, and if the cargo were to be delivered at their port of destination that it would belong to the same persons who were the owners when the said cargo was placed on board, and to none others.

13. To the 13" interrogatory deponent answers:

There were several bills of lading signed for each article on board the ship; but as that is the duty of the agent, I do not know how many were signed. I do not think any of the bills of lading are false.

14. To the 14" interrogatory deponent answers:

I do not know anything about any bills of lading being now in the U. S. of America.

15. To the 15" interrogatory deponent answers:

There were no charter party for that voyage.

25 16. To the 16" interrogatory deponent answers:

All of the papers on board the said vessel at the time of her capture were delivered to the prize master. None of the papers of the ship were burnt, torn, thrown overboard, or cancelled or concealed.

17. To the 17" interrogatory deponent answers:

I do not know whether or not the said vessel has ever before been captured and condemned as prize.

18. To the 18" interrogatory deponent answers:

I have sustained no loss by the capture or detention of this vessel. I have received no indemnity, satisfaction, or promise of satisfaction for any loss which I have sustained or may sustain by this capture.

19. To the 19" interrogatory deponent answers:

The ship and cargo were insured. I do not know where they were insured.

20. To the 20" interrogatory deponent answers:

In case I had arrived at the port of destination, as shown by the ship's papers, I believe the cargo would have belonged to the consignees.

21. To the 21" interrogatory deponent answers:

I believe the cargo was produced and manufactured in the United States.

22. To the 22" interrogatory deponent answers:

All of the cargo was removed from the shore at the docks *at the*
26 *docks* right on board my vessel at New York between the 18" day of April, 1898, and 20" day of April, 1898.

23. To the 23" interrogatory deponent answers:

I know very little about the bills of lading; a copy of each was delivered on board my boat and I delivered them to the prize master. We

sailed from the port of New York on the 20″ day of April, 1898, at 1.30 p. m.

24. To the 24″ interrogatory deponent answers:

All the papers and mail of the ship were delivered to the prize master. None was delivered to anyone *a*lse.

25. To the 25″ interrogatory deponent answers:

None of the cargo was broken during the voyage. A part has been broken by the U. S. marshal, under the order of the court, for the purpose of selling perishable cargo.

26. To the 26″ interrogatory deponent answers:

There were passengers on board; none of them were secreted. I do not know what their names were. There were 29 passengers. There is one Frenchman and the balance are Spaniards. I do not know their rank or occupations. I do not know if any of the' had any commission. They were taken on board at New York on 20″ day of April, 1898. They were destined for Havana; one was for Vera Cruz. I do not know what business they were on. None of the passengers had any connection with the ship in any manner, nor the cargo. There were no soldiers, officers, mariners secreted on board. Some of the passengers may be soldiers or officers, but I do not know it to be so. There were no citizens of the United States on *h*oard or secreted or confined. I had two Spanish mariners belonging to my ship placed in irons previo*y*s to my capture; they have since been released by me.

27 27. To the 27″ interrogatory deponent answers:

That to the best my knowledge and belief all of the passports and papers on board my ship are true and correct; none of them are false, and I do not know of anything that would *e*ffect their credit. The clearance papers were obtained from the collector of customs at New York; they were obtained for this ship only, and were upon oath from myself they were obtained. The ship had a license from the American Gover'ment (clearance papers), and also a royal patent from Spain.

28. To the 28″ interrogatory deponent answers:

I have neither written or signed any letters o*f* papers since I was captured. Did send a telegram to the owners at Havana and to New York informing them that I had been captured. I wrote two letters to my family, and delivered them to the U. S. marshal to be mailed.

29. To the 29″ interrogatory deponent answers:

We were steering our course towards Havana when we were first captured. Her course was not altered upon the appearance of the capturing vessel. Our course was always directed for Havana. The ship was not sailing wide or beyond her port of destination at any time previous to her capture. Her course was, after capture, shaped for Key West on the 25″ day of April, 1898.

30. To the 30″ interr*i*gatory deponent answers:

I know nothing about any sale or transfer of the ship. If the ship should be restored I believe she would belong to the persons now said to be the owners, and to none others.

31. To the 31″ interrogatory deponent answers:

28 There mounted on board the ship at the time of her capture five guns. There were also guns, bayonets, and swords. She was armed because in the contract which the Gover'ment had with company it required that all official mail ships shall have arms and ammuni-

tion. She was armed on account of articles 26, page 11, of extract of contract of service of marine postal for the use of the captains of mail steamers. Two of them were breach loaders, 9 centimeters, mounted, one on each side of the ship, with 30 round' of shot for each. One Maxim gun mounted on the bridge, with am'unition. Two signal guns, one on each side of the pilot house, with ammunition. About 30 or 40 swords about 20 Remington rifles, with ammunition, and 10 Mauser rifles, with am'unition. The arms have been on board for some time; the cannon were put there about three years ago. The Mauser rifles were put on board about one year ago in Havana by the company in order to have the crew armed. On account of the company these arms and am'unition were placed on board.

32. To the 32″ interrogatory deponent answers:

I have already in my answers to the previous interrogatories answered fully all that I know con'erning the true property, ship, cargo, and its destination.

M. QUEVEDO.

Sworn to and subscribed before me May 11″, 1898.

J. OTTO, *Prize Commissioner.*

29 In the district court of the United States in and for the southern district of Florida, in admiralty.

UNITED STATES OF AMERICA
vs.
SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of GABRIEL REYAN, a witness produced, sworn, and examined in preparatorio, on the 13″ day of May, A. D. 1898, at the court-house, Key West, in said district, the said witness having been produced for the purpose of such examination, in behalf of the captors of a certain ship or vessel called the "Panama."

Deponent says as follows:

My name is Gabriel Reyan; I was a passenger of the 3″ class on board the Spanish steamer "Panama" at the time she was captured. I have resided in New York for five years. My home is in San Juan de Porto Rico. I am a Spanish subject. On the night of the 24″ day of April, A. D. 1898, the captain of said ship gave orders that all lights on board said vessel should be put out. All lights including side lights were put out and no lights of any description were allowed on board said ship. During said voyage a man was placed in the top mast with a glass and he was ordered to report whenever a vessel was in sight. When a vessel arrived in sight he would report to the capt. of the "Panama," who would scan said vessel. I heard from some of the passengers that there was among the cargo arms and am'unition in the hold. I was told that the captian had arms and am'unition thrown overboard before capture.

GABRIEL REYNA.

Sworn to and subscribed before me May 13″, 1898.

J. OTTO, *Prize Commissioner.*

(Endorsed:) Standing interrogatories and depositions in preparatorio.

30 In the district court of the United States, southern district of Florida, in admiralty.

UNITED STATES
against
STEAMER "PANAMA" AND CARGO. } Prize.

This cause having come on to be heard upon the libel and proofs and testimony taken in preparatorio, and all due proceedings having been had, and claims to the vessel and cargo filed, and it appearing to the court that the said steamer "Panama" is enemy's property, and was upon the high seas at the time of the President's proclamation exempting certain vessels from arrest; it is hereby ordered, adjudged, and decreed that the steamer "Panama" be condemned and forfeited to the United States, as lawful prize of war, and that the marshal proceed to advertise and sell said vessel after due and proper notice, at public auction, in accordance with the law, and that the proceeds be deposited with the assistant treasurer of the United States at New York.

In the matter of the claim of certain items of cargo of said steamer "Panama" by J. B. Carberry & Co., it appearing that said goods belonged to and were the property of American citizens of New York, and that the title had not passed to enemies of the United States; it is ordered, adjudged, and decreed that the said claim be allowed and the said goods, consisting of 2,798 bags of corn and 200 bags of bran, be restored and delivered to the claimants, or, if any of the same have been sold under any order of this court, the proceeds be so restored and delivered.

In the matter of the claim of Samuel Hermanos for certain property of the cargo of said steamer "Panama," it appearing that the said property was shipped by said claimants, a British citizen and
31 resident of New York, and that the shipments were made to certain merchants, citizens, and residents of Mexico, and were not the property of enemies of the United States, it is ordered that said shipments, consisting of shoes, watches, and lumber, be restored and delivered to the claimants thereof.

In the matter of the claim of Josephine M. Wupperman, an American citizen of New York, it appearing that said cargo was shipped by said claimant as such citizen of New York, to various parties, citizens of Mexico, and neutrals; that the property was the property of said American citizen or said neutrals; it is ordered that the said claims be allowed and said property so shipped by said claimants be restored and delivered to said claimant.

In the matter of the claim of Alfred M. Seixas, an American citizen of New York, it appearing that the property herein claimed, altho' shipped upon the order of alien enemies of the United States, was shipped to the agent of said Seixas, and was not to be delivered until payment was made, and that no title passed from the American shipper, but was retained by him. It is therefore ordered that said property so claimed by him be restored and delivered to the claimant.

In the matter of the claim of Mosle Bros., American citizens, altho' it is alleged that the claimants retained their title to the property, it appear' from the evidence of the bills of lading that the shipments were made to order, and the bill of lading, duly endorsed, was forwarded to

merchants of Nuevitas, Cuba. This appears to be a cause in which further proof may be allowed, and it is so ordered.

In the matter of the claim of Anthony R. Maicas for certain box's of bran and packages of hardware, consigned to parties whose citizenship is unknown, it is ordered that claimants have permission to introduce further proof in regard to the title so claimed.

In the matter of the claim of R. Fabien, it not satisfactorily appearing in whom title to the property embodied in this claim is, it is ordered that the claimant have leave to introduce further proof.

32 In the matter of the claim of J. & M. Menendez, natur'lized citizens of New York, it being alleged in the test affidavit under such claim that the property was shipped to certain parties in the port of Havana, but the title was not to pass to consignee until same was paid for, but the testimony on said point being unsatisfactor*ily*, it is ordered that claimant be p'rmitted to introduce further proof in support of said allegation.

In the matter of the claim of Joaquin A. Modina and Jose P. Del Castillo, comprising the firm of J. Modina & Co., of New York, citizens of the United States, although the test affidavit claims that the goods were still the property of the claimant, yet the bill shows them consigned to Toman, Hoar & Co., of Nuevitas, Cuba, and to be without any restricting clause or limit to passage of title. Proof being unsatisfactory, the claimants are permitted to file further proofs to establish their ownership.

And it further appearing that the*y* were certain portions of said cargo shipped from Carlos Booth & Co., of New York, and George W. Mitchell, of New York, to certain parties in Mexico, presumptively Mexican citizens and neutrals; and there being nothing to show that said property, the same being shipped fro*n* an American port to a neutral port, was enemy property, it is ordered the owner have sixty days to file a claim herein and introduce proof in support thereof.

And it is further ordered that all the cargo of said vessel unclaimed and not provided for in this decree is condemned and forfeited, and ordered to be sold and the proceeds deposited at New York, in accordance with the law, and in event any of the property herein ordered to be restored has been sold, the claims allowed be good as against the proceeds thereof.

It is further ordered that the several parties herein, claimants who are permitted to file further proofs or ownership, have sixty days to file same.

JAMES W. LOCKE, *Judge.*

33 KEY WEST, FLORIDA, *May 27th, 1898.*

(Endorsed:) Decree of condemnation. Filed May 27th, 1898. E. O. Locke, clerk.

34 U. S. S. "MANGROVE,"
Key West, Fla., April 26th, 1898.

SIR: 1. I have the honor to submit a claim to the Spanish steamer "Panama," as a prize to the U. S.' "Mangrove."

2. The "Panama" was captured off Havana, Cuba, by the U. S. S. "Mangrove," April 25", 1898, and this claim is made in behalf of the officers and crew of the U. S. S. "Mangrove."

3. At the time of the capture of the Spanish steamer "Panama" by the U. S. S. "Mangrove," no other vessels were within signal distance.

4. The Spanish steamer "Panama," with her cargo and papers, were delivered to the U. S. district attorney and U. S. deputy marshal, Key West, Florida, April 26th, 1898.

Very respectfully,

W. H. EVERETT,
Lieut. Commander, U. S. Navy, Commanding.

The JUDGE U. S. DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA.

(Endorsed:) Claim of S. S. "Mangrove." Filed May 11", 1898. E. O. Locke, clerk.

35 U. S. S. "MANGROVE,"
Key West, Fla., April 25th, 1898.

SIR: I have the honor to report to you that on April 25th, 1898, the U. S. S. "Mangrove," Lieut. Comdr. W. H. Everett, U. S. Navy, Commandind, sighted the Spanish steamer "Panama," said to be of the New York and Havana S. S. Line, about twenty miles to the northward of Havana, Cuba, intercepted her, fired three shots across her bow and brought her to. I was sent on board from the "Mangrove" as prize master and found the ship to be as above stated; took charge of the ship and papers and acted as prize master from the time of her capture to delivery at Key West, Fla. The trip to Key West was made under the escort of the "Mangrove."

I wish to state that the "Panama" is armed with two (2) breech-loading rifles of about 14 pdr. calibre, protected by shields; one (1) Maxim gun, and one small Yacht gun. The battery of the "Mangrove" co'cists of two (2) 6 pdr. B. loading rapid fire Hotchkiss rifles. No small arms yet supplied the ship, from which it will be naturally seen that the "Panama" had a much heavier battery than the "Mangrove."

There was no ves'el within signal distance at the time of capture.

JOHN H. DAYTON,
Ensign, U. S. Navy, Prize Master.

The U. S. DISTRICT ATTORNEY,
Key West, Florida.

(Endorsed:) Report of prize master. Filed April 21, 1898. E. O. Locke, clerk.

36 In the district court of the United States, southern district of Florida.

THE UNITED STATES OF AMERICA
vs.
THE STEAMER "PANAMA." } Prize.

JOHN H. DAYTON, being duly sworn, says: My name is John H. Dayton; I am an ensign U. S. Navy on board U. S. steamer "Mangrove;" that on the 25th day of April, A. D. 1898, the Spanish steamship "Panama" was captured as a prize of war by the steamer "Mangrove," commanded by Lieut. Commander W. H. Everett, U. S. N.; that said steamship

"Panama" was delivered by said W. H. Everett to Rear-Admiral Wm. T. Sampson (commanding North Atlantic Squadron), together with the documents and other papers found on said steamship "Panama;" that said steamship "Panama," with said document' and papers aforesaid, were turned over to affiant as prize master, with instructions to proceed to Key West, Florida; that said papers and documents this day delivered to G. Bowen Patterson, prize commissioner at Key West, Florida, are the identical documents and papers pertaining to the said steamship "Panama" delivered to him, and that they are in the same condition as when delivered to him.

JOHN H. DAYTON,
Ensign, U. S. Navy, Prize Master.

Sworn to and subscribed before me this 26th day of April, A. D. 1898.

G. BOWEN PATTERSON,
Prize Commissioner.

(Endorsed:) Affidavit of prize master. Filed April 26th, 1898. E. O. Locke, clerk.

37 District court of the United States, southern district of Florida.
1898 The in a cause of prize.

Interrogatories to be answered by parties claiming to share distribution of prize money in the above-entitled cause, or by witnesses examined in behalf of such claim.

1. Please to state your name, age, rank, and office, and the service you are now on.
2. In what vessel were you, and in what capacity, at the time of the capture of the above-named ship.
3. State particularly all the part your vessel took in the pursuit or capture of the prize.
4. What vessel of the Navy were within signal distance of the vessel or vessels making the prize? Please explain in what sense you use the words "within signal distance," and what kind of signals you refer to.
5. Where was your vessel at the time the prize was boarded and possession was taken of her? Were you within signal distance? Please explain in what sense you use the words "within signal distance."
6. If your vessel was not within signal distance at the time of possession taken, how soon after possession taken did you come within signal distance?
7. Was your vessel within signal distance of the vessel or vessels of the Navy that made the prize at any time during the chase; and if so, at what time? Was she so when the prize was first sighted? Please state in what sense you use the words "signal distance" in this connection, and what kind of signals you refer to.
8. Did your vessel exchange signals with or receive signals from any vessels of the Navy engaged in the chase or making the capture? If so, what signals and when, and was the chase in sight at the time?
9. If your vessel was not within signal distance of the vessel or vessels making the prize, please state whether you make a claim to share in the distribution of the prize money. If so, on what ground do yo' put you claim? Please state all the facts in relation thereto.

10. Please state any other facts within your knowledge which you have not yet stated, tending to show what vessels of the Navy were or were not within signal distance of the vessel or vessels making the prize.

38 In the district court of the United States, in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of A. F. OLSSEN, a witness produced, sworn, and examined on the 31st day of May, 1898, on board the U. S. S. "Mangrove" on the standing interrogatories established by the district court of the United States in and for the southern district of Florida; the said witness having been produced for the purpose of such examination, in behalf of the claim of the U. S. S. "Mangrove" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:

My name is A. F. Olssen, age 28, quartermaster, 1¢ on U. S. S. "Mangrove," doing duty on blockade line off Havana.

2. To the second interrogatory deponent answers:

I was attached to and on board the U. S. S. "Mangrove," as quartermaster, first class.

3. To the third interrogatory deponent answers:

While on the road to Key West, steering N. ¾ E., we sighted a strange vessel and stood for her, shortly after 5.00 p. m. of April 25th. She flew a Spanish flag, so we fired three shots over her, to hove her to, about 6.00 p. m. Officer Dayton boarded her and took possession. Looking around I saw no other vessel in sight.

4. To the fourth interrogatory deponent answers:

No vessel in signal distance. By "within signal distance" I mean within distance to read any sort of signals set by another vessel.

39 5. To the fifth interrogatory deponent answers:

We were about 100 yards from prize when taken. As no other vessel was around, the last part of the question does not apply to us.

6. To the sixth interrogatory deponent answers:

This does not apply to our vessel.

7. To the seventh interrogatory deponent answers:

This does not apply to our vessel.

8. To the eighth interrogatory deponent answers:

This does not apply to our vessel.

9. To the ninth interrogatory deponent answers:

This does not apply to our vessel.

10. The horizon was clear, except a smoke in the southward and westward.

A. F. OLSSEN,
Quartermaster, first class.

Sworn to and subscribed before me May 31st, 1898.

W. H. EVERETT,
Lieut. Comdr., U. S. Navy, Commanding Officer U. S. S. "Mangrove."

Endorsed: Deposition of A. F. Olssen in behalf of "Mangrove." Filed June 6th, 1898. E. O. Locke, clerk.

40 In the district court of the United States for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of A. CHIPCHASE, a witness produced, sworn, and examined on the 31st day of May, 1898, on board the U. S. S. "Mangrove," on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Mangrove" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:
My name is Albert Chipchase; age, 58 years; boatswain's mate, 1st class.
2. To the second interrogatory deponent answers:
I was attached to and on board the U. S. "Mangrove" as boatswain's mate, 1st class.
3. To the third interrogatory deponent answers:
On the course to Key West we sighted the steamer and stood for her. Soon it was seen to be flying a Spanish flag. We fired three shots in front of her and she hove to. Officer Dayton boarded and took possession of her about six o'clock. She was the "Panama" of Barcelona.
4. To the fourth interrogatory deponent answers:
There were no vessels within signal distance. By "within signal distance" I mean within a distance to recognize signals of any character.
41 5. To the fifth interrogatory deponent answers:
We, being the vessel to take the prize, were lying near by the "Panama." The rest does not apply.
6. To the sixth interrogatory deponent answers:
This does not apply to us.
7. To the seventh interrogatory deponent answers:
This does not apply to our vessel, as we took the prize.
8. To the eighth interrogatory deponent answers:
No; no vessels to exchange signals with at any time of the chase or capture.
9. To the ninth interrogatory deponent answers:
This does not apply to our vessel.
10. To the tenth interrogatory deponent answers:
Upon looking all around, nothing was in sight save smoke to the southward and westward.

ALBERT (his x mark) CHIPCHASE,
Boatswain's Mate, First Class.

Sworn to and subscribed before me May 31st, 1898.
W. H. EVERETT,
Lieut. Comdr., U. S. Navy,
Commanding Officer U. S. S. "Mangrove."

(Endorsed:) Deposition of A. Chipchase in behalf of the "Mangrove." Filed June 6, 1898. E. O. Locke, clerk.

42 In the district court of the United States in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of W. W. RALSTON, a witness produced, sworn, and examined on the 31st day of May, 1898, on board the U. S. S. "Mangrove," on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Mangrove" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:

My name is Wm. Wallace Ralston; age, 22 years; apothecary on board the U. S. S. "Mangrove," doing service on the blockade line off Havana.

2. To the second interrogatory deponent answers:

I was attached to and on board the U. S. S. "Mangrove" as apothecary when she captured the "Panama."

3. To the third interrogatory deponent answers:

On April 25th, 1898, after leaving the U. S. S. "Indiana," about 4.00 p. m. the "Mangrove" steamed for Key West. After about an hour's steaming a strange steamer was sighted to the northward and eastward. We stood for her. A few minutes before 6.00 we fired three guns in front of her. After the third she hove to and surrendered. At 6.05 Ensign Dayton boarded this steamer, which was found to be the "Panama," Barceolana, flying the Spanish flag. With our prize we steamed back towards where we left the "Indiana" about two hours before.

43 About dark we ran up to the "Indiana," who fired a shot in front of us and our prize. The comdt. of the "Indiana" ordered the "Mangrove" to report to the comdr. in chief with her prize. This done, we were ordered to proceed to Key West, which we did.

4. To the fourth interrogatory deponent answers:

No vessel of the Navy was within signal distance. By "signal distance" I mean within the distance that signals of any nature whatsoever can be communicated.

5. To the fifth interrogatory deponent answers:

My vessel took the prize—was within 100 yards of her at the time; therefore second part does not apply to me.

6. To the sixth interrogatory deponent answers:

This does not apply to me, as we were the only vessel there.

7. To the seventh interrogatory deponent answers:

This does not apply to me.

8. To the eighth interrogatory deponent answers:

No signals to or from any vessel, as we were the only U. S. S. engaged in the chase and capture.

9. To the ninth interrogatory deponent answers:

This does not apply to me.

10. To the tenth interrogatory deponent answers:

I was on upper deck, near pilot house, when vessel was captured.

Cadet L. C. Palmer turned and told me to look well around to see if any vessel was in sight. I did, but saw no vessel—saw only a smoke toward south'ard and westward, which afterward proved to be from the "Indiana." Chapl'in Cassard, of the "Indiana," who had taken passage on "Mangrove" to Key West, also remarked to me later that the
44 "Indiana" was out of signal distance and would not share the prize.

W. W. RALSTON,
Apothecary, U. S. Navy.

Sworn to and subscribed before me May 31st, 1898.

W. H. EVERETT,
Lieut. Comdr., U. S. Navy,
Commanding Officer U. S. S. "Mangrove."

(Endorsed:) Deposition and testimony of W. W. Ralston in behalf of "Mangrove." Filed June 6, 1898. E. O. Locke, clerk.

45 In the district court of the United States in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of JOHN PETERSON, a witness produced, sworn, and examined on the 31st day of May, 1898, on board the U. S. S. "Mangrove," on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Mangrove" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:
My name is John Peterson; age, 28 years; mate on U. S. S. "Mangrove," doing duty blockade line.

2. To the second interrogatory deponent answers:
I was attached to and on board the U. S. S. the "Mangrove" as mate at time of capture of "Panama."

3. To the third interrogatory deponent answers:
We were steering to Key West N. ¾ E., when about 5 p. m. we sighted a strange steamer and bore down for her; she prove' to be Spanish "Panama." About 6.00 p. m. fired three shots and hove her to. Ensi*gh* Dayton boarded and took possession at 6.05.

4. To the fourth interrogatory deponent answers:
46 There were no vessels of the Navy within signal distance. By signal distance I mean when a vessel is close enough to communicate signals in any way.

5. To the fifth interrogatory deponent answers:
Our vessel being the captor, we were near at hand.

6. To the sixth interrogatory deponent answers:
This does not apply to us, we being the captor.

7. To the seventh interrogatory deponent answers:
This does not apply to our vessel.

8. To the eight' interrogatory deponent answers:
No ship in sight to give or receive signals.
9. To the ninth interrogatory deponent answers:
This does not apply to us.
10. To the tenth interrogatory deponent answers:
I, being on watch, was ordered to search with the glasses the horizon for vessels. I took the telescope, and from the bridge looked; all that could be seen was a smoke in the direction which we left the U. S. S. "Indiana."

JOHN PETERSON,
Mate, U. S. Navy.

Sworn to and subscribed before me this May 31st, 1898.

W. H. EVERETT,
Lieut. Comdr., U. S. Navy, Commanding Office' U. S. S. "Mangrove.

(Endorsed:) Deposition of John Peterson in behalf of "Mangrove." Filed June 6th, 1898. E. O. Locke, clerk.

47 In the district court of the United States for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMER "PANAMA." } Prize.

Deposition of JOHN HANSEN, a witness produced, sworn, and examined on the 31st day of May, 1898, on board the U. S. S. "Mangrove," on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Mangrove" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:
My name is John Hansen; age, 27 years; cox'wain on board U. S. S. "Mangrove," doing service on blockade line off Havana.
2. To the second interrogatory deponent answers:
I was attached to and on board the U. S. S. "Mangrove" as cox'wain.
3. To the third interrogatory deponent answers:
We were on our course to Key West when we sighted steamer about 5 p. m. and stood for her to the northward & eastward. Soon a Spanish flag was made out, and we ran up to and fired three shots, when she hove to. Ensign Dayton boarded and took pos'session a few minutes past 6.00. She was the "Panama," of Barcelona.
4. To the fourth interrogatory deponent answers:
No vessel was within signal distance at the time. By "signal distance" I mean within distance to communicate signals any way.
5. To the fifth interrogatory deponent answers:
We were near at hand. As we were the vessel to capture, the
48 question does not apply.
6. To the sixth interrogatory deponent answers:
This does not apply to our vessel.

7. To the seventh interrogatory deponent answers:
This does not apply to our vessel.
8. To the eight' interrogatory deponent answers:
No; there were no vessels to exchange signals with.
9. This does not apply to our vessel.
10. To the tenth interrogatory deponent answers:
I was on watch on the bridge and could see no vessel. Only a smoke could be seen in the direction we left "Indiana," about 4.00 p. m.

Coxswain JOHN HANSEN.

Sworn to and subscribed before me May 31st, 1898.

W. H. EVERETT,
Lieut. Comdr., U. S. Navy, Commanding Officer U. S. S. "Mangrove."

(Endorsed:) Deposition of John Hansen in behalf of "Mangrove." Filed June 6th, 1898. E. O. Locke, clerk.

49 In the district court of the United States, in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of JOSEPH CLINTON, a witness produced, sworn, and examined on the 31st day of May, 1898, on board the U. S. S. "Mangrove," on the standing interrogatories established by the district court of the United States in and for the southern district of Florida; the said witness having been produced for the purpose of such examination, in behalf of the claim of the U. S. S. "Mangrove" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:
My name is Joseph Clinton; age, 30 years; gunner's mate, U. S. S. "Mangrove," serving on the blockading line on the coast of Cuba.
2. To the second interrogatory deponent answers:
In the U. S. S. "Mangrove" as gunner's mate.
3. To the third interrogatory deponent answers:
We had left the Cuban coast to return to Key West for coal & provisions about 6 o'clock p. m. We had made about twenty miles when we sighted a steamer which we steered for at once, and made out to be flying the Spanish flag. We ran closer and fired one shot across her bows, but we had to fire two more before she stopped. We then lowered a boat and Ensign J. H. Dayton boarded her, and the commanding officer told him to steer for the "Indiana," being last vessel we had seen on leaving the Cuban coast.

50 4. To the fourth interrogatory deponent answers:
There was no vessel near enough to have made any Navy code signals that we could have understood.
5. To the fifth interrogatory deponent answers:
Don't apply.
6. To the sixth interrogatory deponent answers:
Don't apply.

7. To the seventh interrogatory deponent answers:
Don't apply.
8. To the eight' interrogatory deponent answers:
No; Did not receive or exchange signals.
9. To the ninth interrogatory deponent answers:
Don't apply.
10. To the tenth interrogatory deponent answers:
Don't apply.

JOSEPH CLINTON,
Gunner's Mate, Third Class.

Sworn to and subscribed before me May 31st, 1898.

W. H. EVERETT,
Lieut. Commander, U. S. Navy, Commanding Officer, U. S. S. "Mangrove."

(Endorsed:) Deposition of Joseph Clinton in behalf of the "Mangrove." Filed June 6th, 1898. E. O. Locke, clerk.

51 In the district court of the United States, in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of JOHN HAVENS DAYTON, a witness produced, sworn, and examined on the 31st day of May, 1898, on board the U. S. S. "Mangrove," on the standing interrogatories established by the district court of the United States in and for the southern district of Florida; the said witness having been produced for the purpose of such examination, in behalf of the claim of the U. S. S. "Mangrove" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:
My name is John Havens Dayton; ensign, U. S. Navy; age, twenty-nine years, attached to and serving on board the U. S. S. "Mangrove" as execution officer, the said ship being engaged in blockade duty off Havana.
2. To the second interrogatory deponent answers:
On board the U. S. S. "Mangrove" as execution officer.
3. To the third interrogatory deponent answers:
About 4 p. m., April 25th, 1898, the "Mangrove" parted company with the "Indiana" and set course for Key West. About 5 p. m. a strange steamer was sighted to the northward and eastward, and chase was given. As we drew nearer her colors were made out to be Spanish and three shots were fired across her bows before she hove to. I was ordered by the commanding officer of the "Mangrove" to board
52 the vessel and take possession of her as prize master, which I did at about seven minutes past six p. m. She proved to be the Spanish steamer "Panama" from New York bound to Havana. In obedience to orders I directed that the "Panama" be steered for some smoke in the horizon to the southward and westward, which we thought to be that of the "Indiana." The "Mangrove" followed on our port

quarter within hail. We soon made out the "Indiana" steering for us at full speed. About 40 minutes past the time of the capture the "Indiana" fired a shot across our bows, apparently not seeing the "Mangrove." The "Indiana" came nearer and hailed the "Mangrove" and ordered the commander of that ship to report to the commander-in-chief with his prize. By request the "Indiana" sent in more cadet and 15 men on board the "Panama" to act as a prize crew. Upon reporting to the commander-in-chief I was ordered to follow the "Mangrove" into Key West. This was done, arriving at Key West the next morning. On the afternoon of that day I turned over the "Panama" with her log book and papers to the proper authorities.

4. To the fourth interrogatory deponent answers:
There was no vessels within signal distance at the time of the capture. By "within signal distance" I mean that distance within which any day signals now in use can be read.

5. To the fifth interrogatory deponent answers:
It does not apply us; we made the capture.

6. To the sixth interrogatory deponent answers:
Does not apply.

7. To the seventh interrogatory deponent answers:
Does not apply.

53 8. To the eight' interrogatory deponent answers:
There were no signals made nor received.

9. To the ninth interrogatory deponent answers:
Does not apply.

10. To the tenth interrogatory deponent answers:
I have no more facts to state.

JOHN HAVENS DAYTON,
Ensign, U. S. Navy.

Sworn to and subscribed before me May 31st, 1898.

W. H. EVERETT,
Lieut. Comdr., U. S. Navy, Commanding Officer U. S. S. "Mangrove."

(Endorsed:) Deposition and testimony of J. H. Dayton on behalf of "Mangrove." Filed June 6th, 1898. E. O. Locke, clerk.

54 In the district court of the United States in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of PAUL SHMITT, a witness produced, sworn, and examined on the 31st day of May, 1898, on board the U. S. S. "Mangrove" on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Mangrove" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:
My name is Paul Schmitt, age 33 years, rank ordinary seaman in the U. S. Navy, on the U. S. S. "Mangrove."

2. To the second interrogatory deponent answers:
I was attached to and on board the U. S. S. "Mangrove" in the capacity of o. seaman.
3. To the third interrogatory deponent answers:
After sighting the strange' the vessel I am on bore for her and fired three shots across her bows and hove her to, and put officer aboard.
4. To the fourth interrogatory deponent answers:
There were no vessel' in signal distance: by a signal distance I mean where signals could be seen if anywhere set by another vessel.
55 5. To the fifth interrogatory deponent answers:
My vessel made the capture, and we were about 100 yards from the "Panama" when the officer boarded her and took possession.
6. To the sixth interrogatory deponent answers:
As I was on board the vessel making the capture, this interrogatory does not apply to me.
7. To the seventh interrogatory deponent answers:
Same as sixth interrogatory—does not apply.
8. To the eight' interrogatory deponent answers:
We did not exchange signals with any vessel, as there were no vessels in sight.
9. To the ninth interrogatory deponent answers:
I was on board the vessel that made the capture.
10. To the tenth interrogatory deponent answers:
I looked around the horizon at time of capture and saw smoke in the direction of which we left the "Indiana," but there were no vessel' in sight.

PAUL SCHMITT,
O. S., U. S. S. "Mangrove."

Sworn to and subscribed before me May 31st, 1898.

W. H. EVERETT,
Lieut. Comdr. U. S. Navy, Commanding Officer U. S. S. "Mangrove."

(Endorsed:) Deposition of Paul Schmitt, in behalf of "Mangrove." Filed June 6th, 1898. E. O. Locke, clerk.

56 District court of the United States in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
THE SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of WILLIAM H. EVERETT, a witness produced, sworn, and examined in preparatorio, on the 11th day May, 1898, at the U. S. court-house, Key West, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida; the said witness having been produced for the purpose of such examination, in behalf of the captors of a certain ship or vessel called the "Panama."

1. To the first interrogatory deponent answers:
My name is William H. Everett. I am lieut. commander in the U. S. Navy, commanding the U. S. "Mangrove."

2. To the second interrogatory deponent answers:

I was on board the U. S. S. "Mangrove" at the time of the capture of the "Panama," and was in command of the U. S. S. "Mangrove."

3. To the third interrogatory deponent answers:

On the afternoon of the 25th day of April, A. D. 1898, at about 3 or 4 o'clock, we parted company with "Indiana," a U. S. man-of-war, of Havana, Cuba, under orders to proceed to Key West for coal. We were on our course to Key West in obedience to said orders. About 20 minutes to 6 p. m. of same day, we sighted a steamer to the northward and eastward standing in toward Havana, Cuba. I immediately steered to intercept her and went to quarters. On approaching the said steamer I
57 discovered that she was flying the Spanish flag, and was a large steamer. I fired a shot across the bow of said steamer as signal for her to heave too, but she paid no attention to the signal. I caused two more shots to be fired across her bows. After the third shot she appeared to stop and go ahead again. At which time she was about two hundred yards away from my ship. I hailed her and told her if she did not stop I would fire into her. Upon this the said steamer stopped. I then lowered the boat and ordered the executive officer, Ensign John S. Dayton, U. S. N., to go on board as prize master in said boat, with two men to pull the boat. The said officer carried out these orders, and afterwards the two men returned to the "Mangrove" with the boat. I noted the time, which was 7 minutes past 6 p. m., which was the time that Ensign Dayton went on board the "Panama." The "Mangrove" having a very small crew and no small arms or cutlasses, I directed Ensign Dayton to steam to the "Indiana's" station, where we had left her under the escort of the "Mangrove," with the object of procuring from the "Indiana" an armed prize crew. About twilight we reached the "Indiana," which fired a shot between the masts of the "Panama." I steamed up in the "Mangrove," hailed the "Indiana," and informed her that the "Panama" was my prize, in reply to which Capt. Taylor, of the "Indiana," asked me the name of the prize, to which I replied the Spanish steamer "Panama." I then requested a prize crew in accordance with the reasons before set forth. The "Indiana" sent on board the "Panama" a naval cadet, ten mariners, and five blue jackets, all armed. I was instructed by Capt. Taylor, of the "Indiana," to find the com.-in-chief and report for orders. The com.-in-chief ordered me to escort the prize into the port of Key West, which I did, arriving in Key West on the forenoon of the 25th day of April, A. D. 1898. The armament of the "Mangrove" consisted of two 6-pounder Hotchkiss guns.

4. To the fourth interrogatory deponent answers:

58 There were no vessels of the Navy within signal distance of the "Mangrove" when she made this capture. I mean by the words "within signal distance" the distance at which a signal by flags could be seen with glasses and assistence could be rendered in case of necessity. There was no vessel or vessels of any description within sight at the time I made this capture.

5. To the fifth interrogatory deponent answers:

At the time the prize was boarded and possession taken of her the "Mangrove" was about twenty miles to the north of Havana, Cuba.

6. To the sixth interrogatory deponent answers:
The "Mangrove" captured the vessel.
7. To the seventh interrogatory deponent answers:
The "Mangrove" made the capture; there were no other vessels present at the time, or in sight.
8. To the eight' interrogatory deponent answers:
Our vessel did not receive or exchange any signals from any vessel of the Navy engaged in the chase or making the capture.
9. To the ninth interrogatory deponent answers:
We claim the whole of the ship and cargo, as the "Mangrove" alone made the capture.
10. To the tenth interrogatory deponent answers:
The witness says that in my answer to the 3" interrogatory I have set forth fully all the facts in my knowledge tending to show what vessels of the Navy were or were not within signal distance of the vessel making the prize. I repeat that at the time of the capture of the "Panama" by the "Mangrove" there were no vessels of the Navy in sight or within signal distance.

59

W. H. EVERETT,
Lieut. Comdr., U. S. Navy.

Sworn to and subscribed before me May 11", 1898.

J. OTTO,
Prize Commissioner.

District court of the United States in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMER "PANAMA." } Prize.

Deposition of L. C. PALMER, a witness produced, sworn, and examined in preparatorio, on the 12" day of May, A. D. 1898, at the U. S. court-house, Key West, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the "Panama."

1. To the first interrogatory deponent answers:
My name is L. C. Palmer; I am a naval cadet, U. S. N.; I am watch officer on board the U. S. S. "Fern." I was at the time of the capture of the "Panama" stationed on board the *the* "Mangrove" in the capacity of navigator.
2. To the second interrogatory deponent answers:
I was on board (stationed) of the U. S. S. "Mangrove" at the capture of the Spanish steamship "Panama."

60

3. To the third interrogatory deponent answers:
We were standing towards Key West, about twenty miles from Havana, Cuba. At about 5.30 p. m. we sighted a steamer about seven miles NE. of the "Mangrove." We gave chase and discovered that it was flying the Spanish flag. We fired a shot across her bow. She kept

on, when we fired another shot across her bow. She stopped her engines, and while we were lowering a boat she started ahead again. We fired a third shot across her bow and the commander of the "Mangrove" shouted to the commander of the Spanish vessel that unless he stopped his ship that the "Mangrove" would sink him. The vessel then stopped. We sent Ensign Dayton on board as prize master. We then saw that it was the Spanish steamer "Panama." When Ensign Dayton went aboard it was 6.7 p. m. and I so entered that fact in the ship's log book. I then told the first and second mate and the apothecary to scan the horizon to see if any other ships were in sight. We then steamed down to where we had left the "Indiana," going at full speed, the "Panama" keeping abeam, with Ensign Dayton on board as prize master. It was dark before we arrived alongside of the "Indiana."

4. To the fourth interrogatory deponent answers:

At the time that the "Mangrove" made the capture of the "Panama" there were no vessels of the U. S. Navy within signal distance. Knowing the position of the U. S. S. "Indiana," as we had not long left her, I saw the smoke of vessel which I took to be the "Indiana." I ordered the first and second mates and the apothecary to look with their glasses in order to ascertain whether or not there were any other vessels in sight. They reported to me that there were no vessel other than the "Panama" in sight. I looked myself with glasses and could see no other ship, but did see smoke which I took to be the smoke of the "Indiana." By "signal distance" I mean the distance at which a signal could be
61 read with glasses or otherwise and assistance rendered in case of necessity. I mean signals which are usually exchanged between ships of war.

5. To the fifth interrogatory deponent answers:

At the time the prize was boarded and pos'session was taken of her the "Mangrove" was about 24 or 25 miles NNE. from Havana, Cuba.

6. To the sixth interrogatory deponent answers:

About three-quarters of an hour after taking pos'session of the prize and being under way for the "Indiana" we came within signal distance of the "Indiana."

7. To the seventh interrogatory deponent answers:

The "Mangrove" alone made the capture of the "Panama."

8. To the eight' interrogatory deponent answers:

Our vessel did not exchange signals with or receive signals from any other vessel of the Navy engaged in making the chase or capture.

9. To the ninth interrogatory deponent answers:

We claim the "Panama" as the prize of the U. S. S. "Mangrove," as she alone made the capture. After we had been steaming toward the "Indiana" under a full head of steam from our first position for about one hour the "Indiana" fired a solid shot across the "Panama." Commander Everett of the "Mangrove" then notified the "Indiana" that the "Panama" was his prize and was then in charge of a prize master.

10. To the tenth interrogatory deponent answers:

62 There were no vessels of the U. S. Navy within signal distance at the time that the "Mangrove" captured the "Panama."

L. C. PALMER,
Naval Cadet, U. S. N.

Sworn to and subscribed before me May 12", 1898.

WINN,
Commander, U. S. N., Prize Commissioner.

(Endorsed:) Deposition of W. H. Everett and L. C. Palmer. Claim of "Mangrove." Filed May 30th, 1898. E. O. Locke, clerk.

63 In the district court of the United States in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of P. L. COSGROVE, Jr., a witness produced, sworn, and examined on the 31st day of May, 1898, on board the U. S. S. "Mangrove," on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Mangrove" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:
My name is P. L. Cosgrove, jr.; age, 26; mate on U. S. S. "Mangrove," doing blockade duty off Havana.

2. To the second interrogatory deponent answers:
I was attached to and on board the U. S. S. "Mangrove" as mate at time of above capture.

3. To the third interrogatory deponent answers:
On April 25th, 1898, after leaving the U. S. S. "Indiana," about 4.00 p. m., the "Mangrove" steamed for Key West. After about an hour's steaming a strange steamer was sighted to the north'ard and east'ard. We*re* stood for her. A few minutes before 6.00 p. m. we fired three shots across her bow before she would stop. After the third she hoved to and surrendered. At 6.05 Ensign Dayton boarded the steamer, which was found to be the "Panama," of Barcelona, flying the Spanish flag. With our prize we steamed towards where we left the "Indiana" about two before. About dark we ran up to the "Indiana," who fired shot across our's and our prize bows. The comdr. of the "Indiana"
64 ordered the "Mangrove" to report to the comdr. in chief with her prize. This done, we were ordered to proceed to Key West, which we did.

4. To the fourth interrogatory deponent answers:
No vessel of the Navy was within signal distance. By signal distance I mean within the distance that signals of any nature whatsoever can be communicated.

5. To the fifth interrogatory deponent answers:
My vessel took the prize; was within 100 yards of her at the time. Therefore second part does not apply to me.

6. To the sixth interrogatory deponent answers:
This does not apply to me, as we were the only vessel there.
7. To the seventh interrogatory deponent answers:
This does not apply to me.
8. To the eight interrogatory deponent answers:
No signals to or from any vessel, as we were the only U. S. S. engaged in the chase and capture.
9. To the ninth interrogatory deponent answers:
This does not apply to me.
10. To the tenth interrogatory deponent answers:
I was on upper deck, in pilot house, ready to relieve Mr. Peterson from watch, as my watch commenced at 6.00 p. m. When vessel was captured Cadet L. C. Palmer asked me to look well around the horizon. I took the telescope, and from the bridge (which is above the pilot house and about 10 feet above upper deck) looked. All that I could see was some smoke in the direction which we left the U. S. "Indiana." Chief Yeoman Murry of the "Indiana," who had taken passage on "Mangrove" to Key West, also remarked to me later that the "Indiana" was out of signal distance and would not share the prize.

P. L. COSGROVE, Jr.,
Mate, U. S. Navy.

Sworn and subscribed before me this May 31st, 1898.

W. H. EVERETT,
Lieut. Comdr., U. S. Navy,
Commanding Officer, U. S. S. "Mangrove."

(Endorsed:) Deposition of P. L. Cosgrove in behalf of "Mangrove." Filed June 6th, 1898. E. O. Locke, clerk.

#155

U. S. S. "INDIANA," 1ST RATE,
At Sea, April 26th, 1898.

SIR: 1. In accordance with sec. 4616 and 4632, R. S., I herewith present the claim for myself, officers, and crew for a share in prize money awarded under the law for the capture of the Spanish steamer "Panama," off Havana, Cuba, April 25th, 1898.

2. The following is an extract of the official log:

4 to 8 p. m. At 4.30 p. m. made signal to "Mangrove;" she came within hail and was given orders to proceed to Key West after receiving mail. 5 p. m., mustered crew at quarters. At 5.10 p. m. went ahead full speed to communicate with "F." About 5.15 sighted strange barkentine-rigged to eastward. Steamer sighted later proved to be a barkentine-rigged steamer with long black stack and straight bow. At 6.00 headed for her. The "Mangrove" was seen to head for the steamer, and at about 6.10 the steamer stopped. Later the "Mangrove" and steamer, whose colors were made out to be Spanish, steamed slowly to the westward. At 6.45 fired shot across bow of steamer, and the Spanish

colors were hauled down at 6.48. Sent officer and prize crew of the following men:

Naval Cadet Falconer.		Sergeant	C. Schneider.
E. Brood,	seaman.	Private	G. Colter.
J. B. Hedenger,	seaman.	"	E. N. Hescock.
P. Downey,	ord. seaman.	"	A. Holmberg.
W. B. May,	" "	"	A. Gunter.
A. F. Kelly,	apprentice.	"	T. H. Jernigan.
		"	P. Maher.
		"	D. Looney.
		"	C. O. Seivers.
		"	W. O. Boyer.
		"	M. Brooks.

67 The prize proved to be the "Panama," of Barcelona, 5 days out from New York, with 29 passengers and general cargo. "Panama" with crew stood to the westward to communicate with "F". Signals as follows:

5.40.	"I" to "F".	Will proceed on service at once.
5.45.	"F" to "I".	What is character of strange vessel?
5.50.	"I" to "F".	Merchant vessel.
5.52.	"F" to "I".	What colors does strange vessel carry?
5.55.	"I" to "F".	Can not see.
6 p. m.	"I" to "F".	Strange vessel changed course to eastward.
6.45.	"I" to "Mangrove".	Come within hail.

(Signed) BENTON C. DECKER,
Lieut., U. S. Navy.

Very respectfully,

H. C. TAYLOR,
Captain, Commanding.

The DISTRICT ATTORNEY, U. S. DISTRICT COURT,
SOUTHERN DISTRICT OF FLORIDA,
Key West, Fla.

(Endorsed:) Claim of U. S. S. "Indiana." Filed May 11th, 1898. E. O. Locke, clerk.

68 #159. U. S. S. "INDIANA," 1ST RATE,
Off Key West, Fla., May 3rd, 1898.

SIR: 1. I have the honor to submit the following application:

In accordance with sec. 4616 and 4632, R. S., I desire to make formal claim for myself, officers, and crew for our share of prize money, under the law, in the capture of the Spanish ship "Panama," off Havana, Cuba, April 25th, 1898.

2. The following is an extract of the official log: From 4 to 8 p. m., this ship at 4.30 p. m. made signal to "Mangrove;" she came within hail and was given order to proceed to Key West after receiving mail. 5 p. m., mustered crew at quarter. At 5.10 p. m. went ahead full speed to communicate with "F." About 5.15 sighted strange barquentine-rigged to eastward. Steamer sighted later proved to be a barquentine-rigged steamer with long black stack and straight bow. At 6.00

headed for her. The "Mangrove" was soon to head for the steamer, and at about 6.10 the steamer stopped. Later the "Mangrove" and steamer, whose colors were made out to be Spanish, steamed slowly to the westward. At 6.45 fired shot across bow, and the Spanish colors were hauled down at 6.48. Sent officer and prize crew of the following men:

Naval Cadet Falconer.
E. Brood, seaman.
J. B. Hedenger, "
P. Downey, ord. seaman.
W. B. May, " "
A. F. Kelly, apprentice.

Sergt. C. Schneider.
Private G. Colter.
" E. N. Hescock
" A. Holmberg.
" A. Gunter.
" T. H. Jernigan.
" P. Maher.
" D. Looney.
" C. O. Seivers.
" W. O. Boyer.
" M. Brooks.

The prize proved to be the prize "Panama" from Barcelona, 5 days out from New York, with 29 passengers and general cargo. Panama with prize crew stood to the westward to communicate with "F." Signals, as follows:

69 5.40. "I" to "F." Will proceed on service at once.
5.45. "F" to "I." What is character of strange vessel?
5.50. "I" to "F." Merchant vessel.
5.52. "F" to "I." What colors does strange vessel carry?
5.55. "I" to "F." Can not see.
6 p. m. "I" to "F." Strange vessel changed course to eastward.
6.45. "I" to "Mangrove." Come within hail.

(Signed) BENTON C. DECKER,
Lieut., U. S. N.

3. The "Indiana" was within signal distance, and able to render effective aid, the Spanish ship being within easy range of our guns.

Very respectfully,

H. C. TAYLOR,
Captain, Commanding.

To the U. S. DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA.

(Endorsed:) Claim of U. S. S. "Indiana" in steamer "Panama." Filed May 19th, 1899. E. O. Locke, clerk.

70 District court of the United States, southern district of Florida.

1898 the in a cause of prize.

Interrogatories to be answered by parties claiming to share distribution of prize money in the above-entitled cause or by witnesses examined in behalf of such claim.

1. Please to state your name, age, rank and office, and the service you are now on.

2. In what vessel were you, and in what capacity, at the time of the capture of the above-named ship?

3. State particularly all the part your vessel took in the pursuit or capture of the prize.

4. What vessel' of the Navy were within signal distance of the vessel or vessels making the prize? Please explain in what sense you use the words "within signal distance" and what kind of signals you refer to.

5. Where was your vessel at the time the prize was boarded and possession was taken of her? Were you within signal distance? Please explain in what sense you use the words "within signal distance."

6. If your vessel was not within signal distance at the time of possession taken, how soon after possession taken did you come within signal distance?

7. Was your vessel within signal distance of the vessel or vessels of the Navy that made the prize at any time during the chase; and if so, at what time? Was she so when the prize was first sighted? Please state in what sense you use the words "signal distance" in this connection and what kind of signals you refer to.

8. Did your vessel exchange signals with or receive signals from any vessels of the Navy engaged in the chase or making the capture? If so, what signals and when, and was the chase in sight at the time?

9. If your vessel was not within signal distance of the vessel or vessels making the prize, please state whether you make a claim to share in the distribution of the prize money. If so, on what ground do yo' put your claim? Please state all the facts in relation thereto.

10. Please state any other facts within your knowledge which you have not yet stated tending to show what vessels of the Navy were or were not within signal distance of the vessel or vessels making the prize.

71 In the district court of the United States in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMER "PANAMA." } Prize.

Deposition of a witness produced and examined on the thirteenth day of May, 1898, on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Indiana" for a share in said prize and her cargo.

To the first interrogatory deponent answers:

1. William G. Cassard; thirty-four years of age; as chapl'in in the U. S. Navy and attached to the U. S. S. "Indiana."

To the second interrogatory deponent answers:

2. I was a passenger aboard the U. S. S. "Mangrove," bound for Key West.

To the third interrogatory deponent answers:

3. I left the "Indiana" and joined the "Mangrove." A short while later—about twenty minutes—a strange steamer was sighted. The "Mangrove" and the steamer were approaching each other, the first headed for Key West and the steamer towards Havana. The "Mangrove"

altered her course slightly to intercept the steamer. The steamer paid no attention to the "Mangrove" until three shots had been fired across her bow; then she stopped. During the chase I saw the "Indiana" coming rapidly towards us. A mate aboard the "Mangrove" reported to the commanding officer that the "Indiana" was coming up.

To the fourth interrogatory deponent answers:

4. The "Indiana" only. She was within three or four miles of us. The prize was between the "Mangrove" and the "Indiana," the "Mangrove" having passed the prize and turned again towards her.

72 Any of the ordinary visual signal should have been discerned by the use of glasses.

To the fifth interrogatory deponent answers:

5. The "Indiana" was from three or four miles distance, coming up rapidly. She was within signal distance, as explained above, and could have rendered effective aid.

To the sixth interrogatory deponent answers:

6. The "Indiana" was within signal distance during the chase and capture.

To the seventh interrogatory deponent answers:

7. The "Indiana" was within signal distance during the chase and capture of the prize, from the beginning to the end. I mean by "signal distance" such distance as would permit the discer'ment of signals, either visual or sound, and the rendering of aid in reply to the signals, if required. The prize could not have escaped the "Indiana."

To the eight' interrogatory deponent answers:

8. I saw no signals.

The "Indiana" was within signal distance and the prize within range of her guns. An officer was sent to the prize from the "Mangrove," and when the "Indiana" came up a prize crew was sent from her.

To the tenth interrogatory deponent answers:

10. I saw no ship within signal distance except the "Indiana."

W. G. CASSARD,
Chaplain, U. S. Navy.

Sworn to and subscribed before me this thirtieth day of May, in the year of our Lord one thousand eight hundred and nin'ty-eight.

H. C. TAYLOR,
Captain, U. S. Navy, Commanding U. S. S. "Indiana."

(Endorsed:) Deposition of W. G. Cassard. "Indiana's" claim. Filed May 30th, 1898. E. O. Locke, clerk.

73 In the district court of the United States in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of a witness produced and examined on the 30th day of May, 1898, on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Indiana" for a share in said prize and her cargo.

To the first interrogatory deponent answers:

1. Benton C. Decker; thirty years of age; a lieutenant in the United States Navy, serving on board the U. S. S. "Indiana" as watch and divisional officer.

To the second interrogatory deponent answers:

2. I was attached to the "Indiana" and on duty as officer of the deck.

To the third interrogatory deponent answers:

3. At about 5.15 p. m., April 25th, we sighted a strange steamer, barquentine-rigged, approaching from the eastward. About 6.00 p. m. headed for her, agoing about ten knots. The "Mangrove" was seen to head for the steamer, and at about 6.10 the steamer stopped. At about fifteen minutes later the steamer and the "Mangrove" headed towards us, the steamer's colors (Spanish) still up. At about 6.45 we fired a shot across the steamer's bows, and the colors were hauled down at about 6.48.

To the fourth interrogatory deponent answers:

4. The "Indiana" only. I mean by signal distance that signals by shapes or sounds could be distinguished. When the "Panama"
74 headed towards us the colors in her ensign could be distingu'shed.

To the fifth interrogatory deponent answers:

5. About four or five miles. We were in signal distance, as explained in the preceeding answer.

To the sixth interrogatory deponent answers:

6. She was within signal distance.

To the seventh interrogatory the deponent answers:

7. Yes. She was within easy signal distance when the prize was first sighted. I mean that visual signals or sound could be easily discerned.

To the eighth interrogatory deponent answers:

8. At about 6.45 we made signal to the "Mangrove" to come within hail.

To the ninth interrogatory deponent answers:

9. She was within signal distance. The chase was within range of our eight and thirteen inch guns. She could not have escaped us if she had evaded or resisted the "Mangrove."

To the tenth interrogatory the deponent answers:

10. The prize was in sight of the "New York." I do not think she was within signal distance, as the "New York" was two or three miles behind us when we started in chase, and did not join in the chase.

BENTON C. DECKER,
Lieutenant, U. S. N.

Sworn to and subscribed before me this 30th day of May, 1898.

H. C. TAYLOR,
Captain U. S. S. "Indiana."

(Endorsed:) Deposition of B. C. Decker. Claim of "Indiana." Filed May 30th, 1898. E. O. Locke, clerk.

75 In the district court of the United States in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of a witness produced and examined on the 30th day of May, 1898, on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Indiana" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:

My name is William C. Dawson; my age, twenty-seven years; I am a first lieutenant in the U. S. Marine Corps, attached to the U. S. S. "Indiana."

2. To the second interrogatory deponent answers:

I was attached to and on board the U. S. S. "Indiana," and acting as signal officer at the time of the capture of the above-named prize.

3. To the third interrogatory deponent answers:

The "Panama," when sighted, appeared to be heading toward Havana, and was some six or seven miles from us. The U. S. S. "Mangrove" was off to the eastward, at a considerable distance from the "Panama." As the latter appro'ched a little nearer to us her rig became recognizable, and Pilot Munson, who was on the bridge beside me, remarked that the vessel looked to him like the "Panama." We started in chase about six p. m., and about the same time noticed that the "Mangrove"
76 was also chasing. In about fifteen minutes I saw the chase stop. The "Mangrove" came up with her and apparently communicated with her by means of a boat. We proceeded towards the ships, and soon made out the stranger's colors to be Spanish, which continued flying until we came up and fired a shot across her bows; whereupon she hauled down her colors and stopped. The "Mangrove" was at that time to the eastward and astern, or on the port quarter of the "Panama." The commanding officer of the "Indiana," on ascertaining the character and name of the prize, sent a prize crew of one officer and fifteen men onto her.

4. To the fourth interrogatory deponent answers:

The "Indiana" was the only one that I could see within signal distance. I use the word "signal" in the sense of communication that would call or summon other vessels to the assistance of the one making the capture; either visual or sound signals. By "visual" I mean either flag or electric (or other lamp) signal, according as it was light or dark.

5. To the fifth interrogatory deponent answers:

This vessel was to the southward, making for the "Panama" at about

ten knots speed. She was within signal distance; this term I use as in answer to previous interrogatory.

6. To the sixth interrogatory deponent answers:

She was within signal distance.

7. To the seventh interrogatory deponent answers:

She was within signal distance of the "Mangrove" from about 5.10 p. m., when the latter parted company with us, until we came up to the "Panama;" she was so when the prize was first sighted. I mean by "signal distance" as explained in answer to fourth interrogatory.

8. To the eighth interrogatory deponent answers:

77 We made signal to the "Mangrove" at 6.45, "come within hail."

9. To the ninth interrogatory deponent answers:

The "Indiana" was within signal distance. The prize, from the time she was sighted, was within easy range of the guns of this ship, and could not *have* possibly have escaped us, *whether* suc'ess she might have had in evading or resisting the "Mangrove." At 5.10 we had left the "Mangrove" temporarily, directing her to proceed to Key West. We ran to the southward to communicate with the flagship "New York," then lying about five miles away from us, after which we were to rejoin the "Mangrove." Before we reached the flagship the chase hove in sight, and without completing our signals to the flagship we went in chase. The "Mangrove" and chase were in plain sight.

10. To the tenth interrogatory deponent answers:

The chase was in sight of the flagship. When we were about two miles from the flagship she signalled us to know what the nature of the stranger was. She did not join the chase.

WILLIAM C. DAWSON.

Sworn to and subscribed before me this 30th day of May, 1898.

H. C. TAYLOR,
Commanding Officer, U. S. S. "Indiana."

(Endorsed:) Deposition of W. C. Dawson. Claim of "Indi'na." Filed May 30th, 1898. E. O. Locke, clerk.

78 In the district court of the United States in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of a witness produced and examined on the 4th day of June, 1898, on the standing interrogatories established by the district court of the United States in and for the southern district of Florida; the said witness having been produced for the pirpose of such examination, in behalf of the claim of the U. S. S. "Indiana" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:

Charles E. Murry; 35 years; chief yeoman, U. S. Navy, attached to the United States ship "Indiana."

2. To the second interrogatory deponent answers:

I was aboard the U. S. S. "Mangrove," as a passenger bound for K

West. The "Mangrove" had left the "Indiana" off Havana at about 5.15 p. m. that afternoon.

3. To the third interrogatory deponent answers:

The "Indiana" was coming up astern at the same time that the "Mangrove" was in chase. About a half or three-quarters of an hour after leaving the "Indiana" the "Mangrove" sighted the prize headed towards the westward, and altered her course to intercept her. The "Mangrove" fired three shots across the bow of the prize before she hove to. I loaded the last gun fired. The first was from the starboard gun, the others from the port.

4. To the fourth interrogatory deponent answers:

The "Indiana" only. I mean by "within signal distance"
79 that the ordinary day signals used in the navy hoists of flags or wig wag could be read by use of glass from the bridge of the "Mangrove." A wig wag from the "Indiana's" crane could have been read by the use of a glass.

5. To the fifth interrogatory deponent answers:

About four miles in a southwesterly direction. She was within signal distance and could have rendered effective aid. Had the prize successfully resisted or evaded the "Mangrove" she could not have escaped the "Indiana," as she was within range of the guns of the main battery.

6. To the sixth interrogatory deponent answers:

She was within signal distance, as explained above.

7. To the seventh interrogatory deponent answers:

The "Indiana" was within signal distance at all times during the chase—from the time the prize was first sighted until captured. I mean by "signal distance" as explained in preceding answers.

8. To the eight' interrogatory deponent answers.

No; I saw no signal.

9. To the ninth interrogatory deponent answers:

She was within signal distance, as already stated. When Mr. Dayton went on board the prize Captain Everett told him to head for the "Indiana." During the firing some one remarked "The 'Indiana' is coming up astern very fast."

10. To the tenth interrogatory deponent answers:

There was no ship within signal distance except the "Indiana."

CHARLES E. MURRY,
Chief Yeoman, U. S. Navy.

80 Sworn to and subscribed before me this 4th day of June, 1898.

H. C. TAYLOR,
Captain, U. S. Navy, Commanding U. S. S. "Indiana."

(Endorsed:) "Indiana's" claim. Deposition of C. E. Murry. Filed June 6th, 1898. E. O. Locke, clerk.

81 2565–00. L.

UNITED STATES (insignia) OF AMERICA.

NAVY DEPARTMENT,
Washington, D. C., April 30, 1900.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed is a correct copy of an extract from the log book of the

U. S. S. "Indiana," from 4 to 8 p. m. Monday, April 25, 1898, on file in this Department.

In testimony whereof I have hereunto set my hand and caused the seal of the Navy Department of the United States to be affixed, at the city of Washington, this thirtieth day of April, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fourth.

[SEAL.]

JNO. D. LONG, *Secretary.*
S. C. L.

82 *Log of the U. S. battleship "Indiana," 1st rate, H. C. Taylor, captain, U. S. Navy, at sea, blockading off Havana, Cuba, Monday, April 25th.*

4 to 8 p. m. partially cloudy, warm, light airs and breezes from westward. At 5 mustered at quarters. At 4.30 made signal (180) to "Mangrove." She came within hail, and was given orders to proceed to Key West. After receiving the mail, sent mail. At 5.10 went ahead full speed to communicate with F. About 5.15 sighted a strange steamer, barkentined rigged, to eastward. The steamer sighted proved to be a barkentined-rigged steamer with long, black stack, straight bow. About 6 headed for her. The "Mangrove" was seen to head for the steamer. At about 6.10 the steamer stopped. Later the "Mangrove" and the steamer, whose colors were made out to be Spanish, steamed slowly to the westward. About 6.45 fired shot across bow of steamer, and the Spanish colors were hauled down at 6.48. Sent officer and prize crew with the following men on board the prize: Naval Cadet Falconer, Sergeant Schneider, Privates E. N. Hescock, G. Colter, A. Holmberg, A. Gunter, T. H. Jernigan, P. Maher, D. Looney, C. O. Sivers, W. O. Boyer, M. Brooks, and J. B. Hedenger, sea.; E. Brown, sea.; A. F. Kelley, app. 1 c.; W. B. May, o. sea.; Downey, o. sea. The prize proved to be the "Panama," of Barcelona, five days out of New York, with 29 passengers and general cargo. Sighted light to northward and westward at end of watch; started in chase. The "Panama," with prize crew, stood to westward to communicate with F.

BENTON C. DECKER,
Lieutenant U. S. N.
S. P. COMLEY,
Lieutenant and Navigator.

83 (Endorsed:) Certified copy log "Indiana." Filed June 1st, 1900. E. O. Locke, clerk.

84 U. S. S. "WILMINGTON," 3RD RATE,
Key West, Florida, June 1st, 1898.

SIR: I submit herewith a claim of the officers and crew of the U. S. S. "Wilmington" in the case of the prize steamer "Panama."

Respectfully,
C. C. TODD,
Commander U. S. Navy, Commanding.

The JUDGE OF U. S. DISTRICT COURT
OF SOUTHERN DISTRICT OF FLORIDA.

(Endorsed:) Claim of "Wilmington." Letter of C. C. Todd. Filed June 1st, 1898. E. O. Locke, clerk.

85 District court of the United States, southern district of Florida, , 1898, . The in a cause of prize.

Interrogatories to be answered by parties claiming to share distribution of prize money in the above-entitled cause, or by witnesses examined in behalf of such claim.

1. Please to state your name, age, rank and office, and the service you are now on.
2. In what vessel were you, and in what capacity, at the time of the capture of the above-named ship?
3. State particularly all the part your vessel took in the pursuit or capture of the prize.
4. What vessel' of the Navy were within signal distance of the vessel or vessels making the prize? Please explain in what sense you use the words "within signal distance," and what kind of signals you refer to.
5. Where was your vessel at the time the prize was boarded and possession was taken of her? Were you within signal distance? Please explain in what sense you use the words "within signal distance."
6. If your vessel was not within signal distance at the time of possession taken, how soon after possession taken did you come within signal distance?
7. Was your vessel within signal distance of the vessel or vessels of the Navy that made the prize at any time during the chase; and if so, at what time? Was she so when the prize was first sighted? Please state in what sense you use the words "signal distance" in this connection, and what kind of signals you refer to.
8. Did your vessel exchange signals with or receive signals from any vessels of the Navy engaged in the chase or making the capture? If so, what signals and when, and was the chase in sight at the time?
9. If your vessel was not within signal distance of the vessel or vessels making the prize, please state whether you make a claim to share in the distribution of the prize money. If so, on what ground do yo' put your claim? Please state all the facts in relation thereto.
10. Please state any other facts within your knowledge which you have not yet stated tending to show what vessels of the Navy were or were not within signal distance of the vessel or vessels making the prize.

86 In the district court of the United States in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA }
vs.
SPANISH STEAMER "PANAMA." }

Deposition of C. C. TODD, a witness produced and examined on the 31st day of May, A. D. 1898, on board the U. S. S. "Wilmington," on the standing interrogatories established by the district court of *of* the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Wilmington" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:
My name is C. C. Todd; age, 50; rank, commander, U. S. Navy, serving as commanding officer on board the U. S. S. "Wilmington."

2. To the second interrogatory deponent answers:

At time of capture I was attached to and serving on board the U.S.S. "Wilmington" as commanding officer.

3. To the third interrogatory deponent answers:

About 5 p. m. April 25th, 1898, while on blockade duty off Havana, Cuba, the steamer "Panama" was sighted by this vessel and reported by signal to the flagship "New York," not as the "Panama," but as a strange steamer. One hour later the "Indiana" was signalled to go in chase. The "Wilmington" was one mile nearer the steamer than the "New York." At dark a search light was observed to the nd. and ed., showing steadily for an unusual length of time. The "Wilmington" stood for it when near enough the light was found to be from the "Mangrove," it being thrown upon the "Panama." The "Mangrove" was the sole custodian of the "Panama." The "Mangrove" was hailed
87 and asked if the "Wilmington" had not better ac'ompany the prize to the flagship, which service was gratefully accepted.

In addition to the above, the "Panama" being much superior in size, armament, and speed to the "Mangrove," the night being very dark, it was possible for the "Panama" to make her escape, until the presence of the "Wilmington" made the seizure final and secure. It is therefore claimed that the "Wilmington" did assist in her capture and that her officers and crew are entitled to a share in the prize.

C. C. TODD,
Commander, U. S. Navy, Commanding.

Sworn to and subscribed before me this 31st day of May, 1898.

[SEAL.] J. B. COLLINS,
Lieutenant, U. S. Navy, Second in Command of "Wilmington."

(Endorsed:) Claim of "Wilmington." Deposition of C. C. Todd. Filed Jun. 1st, 1898. E. O. Locke, clerk.

88 In the district court of the United States in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMER "PANAMA."

Deposition of CLAUDE BAILEY, a witness produced and examined on the 31st day of May, A. D. 1898, on board the U. S. S. "Wilmington," on the standing interrogatories established by the district court of *of* the United States in and for the southern district of Florida, the said witness havin*f* been produce*s* for the purpose o*d* such examination in behalf of the claim of the U. S. S. "Wilmington" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:

My name is Claude Bailey; age, 27; rank, ensign, U. S. N., serving as a watch and divisional officer on board the U. S. S. "Wilmington."

2. To the second interrogatory deponent answers:

At time of capture I was attached to and serving on board the U.S.S. "Wilmington" as watch and divisional officer.

3. To the third interrogatory deponent answers:

I had the 8 p. m. to midnight watch as officer of the deck in the 25th day of April, 1898. I relieved Lieut. Bartolette at 8 p. m. The "Wilmington" was then headed to the northward and eastward, for the vessel in sight in that direction. I could see at this time the lights of the prize, and the private signal kept burning in the vessel making the capture. A few minutes later went at half speed, and soon spoke the vessel, the captor proving to be the "Mangrove" and the prize the "Panama." They were then proceeding slowly to southward and westward. Took a position on the starboard side of "Panama," the "Mangrove" being
89 on the port side, and accompanied them to southward and westward, arriving in the neighborhood of the flagship "New York" about 9 o'clock, when the "Wilmington" signalled to the "New York:" "Steamer 'Panama,' in charge of 'Mangrove.'" The "New York" having communicated with the "Panama," the "Wilmington" proceeded to her station on the blockade.

9. To the ninth interrogatory deponent answers:

In addition *the* the statement made above, the "Panama" was faster than the "Mangrove;" the former undoubtedly came to realize the size and power of the latter; the night was dark and it was not easy to keep in close touch with the prize. From these conditions I consider that the "Wilmington," by thus making secure the prize and by her presence dispelling any thoughts of escape her captain may have had, is justly entitled to a share in the distribution of prize money.

CLAUDE BAILEY, *Ensign, U. S. N.*

Sworn to and subscribed before me this 31st day of May, 1898.

[SEAL.] C. C. TODD,
Commander, U. S. N., Commanding Officer U. S. S. "Wilmington."

(Endorsed:) Claim of "Wilmington." Deposition of C. Bailey. Filed June 1st, 1898. E. O. Locke, clerk.

90 In the district court of the United States in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of A. C. ALMY, a witness produced and examined on the day of May, A. D. 1898, on board the U. S. S. "Wilmington," on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Wilmington" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:

A. C. Almy; age, 41; lieut., U. S. N., watch and divisional officer on board the U. S. S. "Wilmington."

2. To the second interrogatory deponent answers:

U. S. S. "Wilmington;" watch and divisional officer.

3. To the third interrogatory deponent answers:

I was officer of the deck on board the U. S. S. "Wilmington" from 4 to 6 p. m. April 25th, 1898, when at 5.25 p. m., while the "Wilmington" was on patrol about seven miles from Havana, the "Wilmington" sighted a merchant steamer to the n'd and e'd and signalled to the flagship "New York," general signal 6216, compass NE. (smoke of a steamer is seen in the direction indicated by compass signal). The "Mangrove," which was distant from the "Wilmington" about four miles, stood to the n'd and e'd, followed soon after by the "Indiana." The steamer seen was the Spanish steamer "Panama," captured soon after by the "Mangrove."

91 At 7.30 p. m. the "Wilmington" sighted lights to the n'd and e'd, and at 7.45 p. m. headed for them, they proving to be the lights of the "Mangrove" and the "Panama."

4. To the fourth interrogatory deponent answers:

The "New York" and the "Wilmington" could have communicated with the "Mangrove" while she was making the prize by signals at a distance; i. e., by means of Very's night signals or by means of the searchlight. The ships were within sound of gun fire of each other. The Indiana" was nearer the "Mangrove" and could have signalled her by electric signals.

5. To the fifth interrogatory deponent answers:

About seven miles to the n'd and e'd of Havana. At the time the prize was taken the "Wilmington" could have communicated with the "Mangrove" by signals at a distance; i. e., by means of Very's night signals or by means of the searchlight. The ships were within sound of gun fire of each other.

8. To the eight' interrogatory deponent answers:

No.

A. C. ALMY,
Lieut., U. S. Navy.

Sworn to and subscribed before me this day of June, 1898.

[SEAL.] C. C. TODD,
Comdr., U. S. N., Commanding U. S. S. "Wilmington."

(Endorsed:) Claim of "Wilmington." Deposition of A. C. Almy. Filed June 1st, 1898. E. O. Locke, clerk.

92 U. S. F. S. "NEW YORK,"
At Sea, May 21, 1898.

SIRS: 1. I have the honor to submit the following claim of this ship to be regarded as sharing in the capture of the Spanish steamer "Panama" on the 25th day of April, 1898.

2. The capture was made by the "Mangrove," assisted by the "Indiana," but the "New York" was in position to render material assistance, if this had been necessary, the facts in the case being as follows:

The "Panama" was about thirty miles NNE. from Havana when captured. From this ship the rig and the number of smoke-pipes of the "Panama" could easily be distinguished, and the changes of course of both the "Mangrove" and the "Panama" could be seen. Signals were exchanged between this ship and the "Indiana" in regard to the charac-

ter of the vessel that was in sight (the "Panama"). She was seen to stop and the "Mangrove" go near her. This ship was prepared to give chase to the "Panama," and could have done so and overhauled her if this had been necessary.

3. I request that this statement be considered when deciding what ships are entitled to share in her capture.

Very respectfully,

F. E. CHADWICK,
Captain, U. S. N., Commanding.

The U. S. PRIZE COMMISSIONER,
Key West, Florida.

(Endorsed:) Statement concerning capture of "Panama." Filed May 29th, 1898. E. O. Locke, clerk.

93 In the district court of the United States, southern district of Florida.

THE UNITED STATES OF AMERICA
vs.
THE STEAMSHIP "PANAMA" AND HER CARGO. } Prize.

The petition of French E. Chadwick, a captain of the United States Navy, respectfully represents that on and about the 25th day of April, 1898, he was in command of the United States ship "New York;" that said "New York" and other public armed vessels of the United States, to wit, "Indiana" and "Mangrove," participated in the capture and subjugation of the Spanish steamship "Panama;" thereafter the said steamship "Panama" was by final decree of this court condemned as prize of war; that the petitioner is informed and verily believes that he and the other officers and men who were on the said 25th day of April, 1898, on duty upon the said United States vessels, "New York," "Indiana," and "Mangrove," are entitled to receive the moiety of the proceeds of the said prize which will be awarded to the captors after deducting therefrom the share *therefrom the share* thereof to which the commander in chief of the United States naval force on the North Atlantic Station is entitled.

Wherefore the petitioner prays the court by its decree of distribution herein to order payment of said moiety to the said commander in chief, to the officers and men of the United States ships "New York," "Indiana," "Nashville," and "Mangrove."

F. E. CHADWICK,
Captain, U. S. Navy.

JOS. K. MC. CAMMON,
JAMES H. HAYDEN,
Proctors for Petitioners.

94 STATE OF NEW YORK,
City and County of New York, ss:

Personally appeared before me French E. Chadwick, known to me to be the person who subscribed the foregoing petition, who, being then duly sworn, deposes and said that the statements contained in the said petition

were true, except those certain alleged upon information and belief, and that as to them he believes them to be true.

Subscribed to and sworn to before me this 20th day of March, 1900.

[SEAL.] G. A. C. BARNETT,
Notary Public, N. Y. Co.

(Endorsed:) Petition of Captain French E. Chadwick for the U. S. S. "New York." Filed March 23rd, 1900. E. O. Locke, clerk.

95 District court of the United States southern district of Florida.

1898. The in a cause of prize.

Interrogatories to be answered by parties claiming to share distribution of prize money in the above-entitled cause, or by witnesses examined in behalf of such claim.

1. Please to state your name, age, rank, and office, and the service you are now on.

2. In what vessel were you, and in what capacity, at the time of the capture of the above-named ship?

3. State particularly all the part your vessel took in the pursuit or capture of the prize.

4. What vessel of the Navy were within signal distance of the vessel or vessels making the prize? Please explain in what sense you use the words "within signal distance," and what kind of signals you refer to.

5. Where was your vessel at the time the prize was boarded and possession was taken of her? Were you within signal distance? Please explain in what sense you use the words "within signal distance."

6. If your vessel was not within signal distance at the time of possession taken, how soon after possession taken did you come within signal distance?

7. Was your vessel within signal distance of the vessel or vessels of the Navy that made the prize, at any time during the chase, and if so, at what time? Was she so when the prize was first sighted?

Please state in what sense you use the words "signal distance" in this connection, and what kind of signals you refer to.

8. Did your vessel exchange signals with or receive signals from any vessels of the Navy engaged in the chase or making the capture? If so, what signals and when, and was the chase in sight at the time?

9. If your vessel was not within signal distance of the vessel or vessels making the prize, please state whether you make a claim to share in the distribution of the prize money. If so, on what ground do you put you' claim? Please state all the facts in relation thereto.

10. Please state any other facts within your knowledge which you have not yet stated, tending to show what vessels of the Navy were or were not within signal distance of the vessel or vessels making the prize.

96 In the district court of the United States in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMSHIP "PANAMA." } Prize.

Deposition of Ensign HENRY C. MUSTIN, a witness produced and examined on the twenty-eight' day of May, 1898, on board the U. S. S. "New York," on the standing interrogatories established by the district court of the United States in and for the southern district of Florida; the said witness having been produced for the purpose of such examination, in behalf of the claim of the U. S. S. "New York" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:

My name is Henry C. Mustin; age, twenty-four (24) years; rank, ensign, serving in the U. S. S. "New York," as aide to the commander in chief.

2. To the second interrogatory deponent answers:

I was attached to and on board of the U. S. S. "New York," as aide to the commander in chief.

3. To the third interrogatory deponent answers:

The "New York" took no part in either pursuit or capture of the prize.

4. To the fourth interrogatory deponent answers:

But the "New York" was within signal distance; that is, she was capable of reading signals (flags from the "Mangrove,") as there was a very high-power glass on board that enabled signals to be read at long distances. The "Indiana" might have able to read the same signals from the "Mangrove," as she was between the "New York" and "Mangrove."

5. To the fifth interrogatory deponent answers:

97 The "Mangrove" bore about northeast from the ship, distant about nine (9) miles. The "New York" was within signal distance, as explained in question four.

6. To the sixth interrogatory deponent answers:

After the prize was brought to by the "Mangrove," this ship chased a steamer leaving the harbor of Havana, which proved to be a British steamer. The "Mangrove" came near this ship, with her prize, about three hours after the capture was made.

7. To the seventh interrogatory deponent answers:

Yes; as explained in question four, at all times during the chase. When the prize was first sighted by this ship the "Mangrove" was within signal distance. Signal distance in this case refers to the distance at which flag signals can be read with ordinary binocular glasses.

8. To the eighth interrogatory deponent answers:

This ship exchanged signals with the "Indiana" as follows, these signals being made or received by me: At 5.38 "New York" made signal to the "Indiana," "What is the character of the strange vessel bearing east?" At 5.45 "Indiana" replied, "Merchant steamer." At 5.47 "New York" signaled to "Indiana," "What flag is stranger flying?" At 5.50 "Indiana" answered, "Can not see." At 6.05 "Indiana" signaled this ship, "Strange vessel changed course east." At 6.06 "Indiana"

signaled this ship, "Mangrove near strange steamer," the "Indiana" being then distant not more than four hundred (400) yards from this ship. The last signal was made by wig wag, the other being flag hoists. The "Indiana," at the time of the signals, was approaching this ship from the direction of the strange steamer.

9. To the ninth interrogatory deponent answers:

In case it should be considered that this ship was not in signal
98 distance, the claim to share in the prize is based upon the fact that this ship was by far the fastest naval vessel in sight, and was, at all times during the chase, in position to overtake and capture the "Panama" if she had escaped from the "Mangrove." The "Panama" was more heavily armed and much faster than the "Mangrove," and could have easily escaped from the latter if she had been alone. The "Panama" was sighted from this ship, and her rig and characteristics be discerned before the "Mangrove" started in pursuit of the "Panama." This was reported to the commander in chief before the "Mangrove" started in pursuit.

10. To the tenth interrogatory deponent answers:

I have no other facts to state.

HENRY C. MUSTIN,
Ensign, U. S. Navy.

Sworn to and subscribed to before me this 29 day of May, 1898.

[SEAL.] F. E. CHADWICK,
Commanding Officer U. S. S. "New York."

(Endorsed:) Deposition of Henry C. Mustin, ensign, U. S. N., regarding "New York's" claim to share in "Panama." Filed May 29th, 1898. E. O. Locke, clerk.

99 District court of the United States, southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMSHIP "PANAMA" & CARGO. } Prize. #8

To the Honorable JAMES W. LOCKE, *Judge of said Court:*

SIR: I have the honor to report that upon examination of the testimony of the captors in the above-entitled cause, I consider that the following vessels are entitled to share in the prize, they being within signal distance and in position to render assistance if required, viz, U. S. steamer "Mangrove."

Respectfully submitted.

WINN,
Commander, U. S. N., Prize Commrs.

(Endorsed:) Report of prize commissioner. Filed Oct. 3, 1898. E. O. Locke, clerk.

100 KEY WEST, FLA., *Oct. 1/98.*

SIR: I transmit herewith reports in 40 prize cases, containing the names of the vessels which, according to testimony, I consider are entitled

to share, they being within signal distance and in a position to render immediate assistance if required. The term signal distance is an elastic one under present conditions, with electric lights, Very's night signals, steam or other sound signals. A vessel might be within such distance and yet not in position to render immediate assistance.

Again, a vessel might be near enough to render assistance by day, when the hoist of flags could be seen, yet not distinguished or read, as in a calm, or with wind blowing signals directly in line with vessel, or in hazy, misty, or foggy weather.

In basing my reports, I have considered that a maximum distance of five miles would place a vessel in position to render immediate assistance, and under ordinary conditions with the glasses ordinary in use on naval ships, signals of every description, day or night, could be distinguished and read. Beyond what distance it is to my mind questionable if a vessel's signals could be positively distinguishable and read or that the vessel would be in a position to be of immediate assistance in dire need. Take, for instance, case of U. S. S. "Mangrove" capturing the "Panama." I consider in this case that had the "Panama" acted on the offensive she could have run down and sunk the "Mangrove," or if she had used guns could have crippled her before either of the claimants, "New
101 York" and "Indiana," could have come to her assistance.

Respectfully,

WINN,
Commander, U. S. N., Prize Commissioner.

Hon. JAS. W. LOCKE,
Judge U. S. Dist. Court, Jacksonville, Fla.

(Endorsed:) Report of prize commissioner. Filed October 3rd, 1898.

102 In the district court of the United States in and for the southern district of Florida.

THE UNITED STATES)
vs.
THE SPANISH STEAMER "PANAMA" AND CARGO.)

In re Distribution of prize money.

Under our prize law the determination of what vessels are entitled to share in prize money for a capture becomes simply a question of fact. The statute is binding upon the courts, and declares positively that those vessels within signal distance and so situated that they can render assistance if required shall share. The privilege is not a matter of right, but a legislative grant and must be decided *by* its terms. It is not sufficient that two vessels are engaged in the same duty or even on the same station or in the same vicinity to entitle them to share, but the rights of each are determined by the language of the statute.

In the case of the "United States vs. Steever," 113 U. S., 747, the court said: "Whatever may have been the reason on which the general rule of distribution laid down in the prize acts were founded, it is enough to say that those rules are fixed and definite, governing all cases coming within their terms, and are the only guides of all courts and officers charged with the duty of administering the prize act."

The "Anglia" Baach. Prize Cases, 566. (F. C., 391.)

Formerly the English prize courts were considered to have
103 more equitable or politic powers in decreeing distributions, but under our statute no such liberality is recognized.

In this case the U. S. S. "Mangrove" made the capture, and it is claimed that it was sole capturing vessel. There was unquestionably the animus capiendi on the one side and submission on the other.

The "Alexander," 1 Gall., 532. (F. C., 164.)

It is contended that the other claiming vessels, viz, the U. S. S. "New York," "Indiana," and "Wilmington," should be considered as capturing vessels equally with the "Mangrove," and the case of the "Atlanta" is cited in support of the contention; but the circumstances of the "Atlanta" and of this case are so entirely different that it is not considered the same decision would necessarily follow. The nearest vessel was unquestionably the "Indiana." She took no active part whatever in the capture; was not in the immediate vicinity until after the surrender and the prize was in charge of the "Mangrove." She is shown to have been at such a distance that but a few minutes before the surrender she could not make out the colors of the captured vessel, a distance which, as appears by the time of the movement of the vessels, must have been from 12 to 15 miles at the least, and the idea that possibly the fact that a portion of her upper works were visible influenced the surrender sufficiently to consider her a capturing vessel can not be accepted. If a capture can be considered a positive, direct, affirmative action, I can not imagine one more positive and direct, without aid, than was this.

The rule to be followed where the strength of the prize and capturing vessel are in question is considered to have been fairly stated in the "Atlanta," F. C., 619, viz: "In determining the relative force of the prize and the vessel making the capture, the court will consider the means the vessel possessed and not the use she made of them." And tested by such rule there can be no doubt that in this case the
104 proofs show conclusively that the prize was of equal or superior force to the capturing vessel.

This brings us to the more difficult question: Were there any vessels within signal distance of the capturing vessel at the time of the capture; and if so, what? The naval prize commissioner, a retired officer of long experience, and in whose judgment I have the greatest confidence, in response to the matter, referred to him in accordance with the standing rules and practice of this court, after a careful examination and consideration of the testimony, has reported that there was no other vessels within signal distance, and that the prize was equal or superior to the capturing vessel.

The U. S. ships "New York, "Indiana," and the "Wilmington" claim to be entitled to share. Whether they or any of them were within signal distance of the "Mangrove" at the time must be determined from the testimony. The question becomes more difficult as the testimony as very largely a matter of the personal opinions or belief of the witnesses, who are directly interested, and the inconsistencies and contradictions found therein would appear to show that such interest has had more or less influence in forming such opinions. When there are such conflicts of testimony, in which the witness, each seems to speak for himself and his ship alone, it becomes necessary to examine carefully the relation and

position of the vessels from proven or admitted circumstances other than the opinions of the witnesses.

Upon the afternoon of April 25th, 1898, the U. S. ships "New York," "Indiana," "Mangrove," and "Wilmington" were lying off the harbor of Havana doing blockade duty. The "Wilmington" appears to have been some distance to the eastward, and perhaps a little to the northward, and the "Indiana" and "Mangrove" some few miles to the northward of the flagship "New York." The captain of the "Wilmington" says he was about seven miles from Havana, and altho' there is no testimony as to the distance of the others, it is presumably about the same.

105 At 4.30 p. m., as is shown by the official log of the "Indiana," which is considered the most reliable testimony upon that point, signal was made from that vessel to the "Mangrove" to come within hail and to proceed to Key West after receiving the mail. Judging from all the testimony, it is fair to presume that it was a little before 5 p. m., at the time the "Mangrove" left the "Indiana," as at ten minutes past five the "Indiana" went ahead full speed, at about ten miles an hour, toward the south'ard to communicate with the flagship. At about 5.25 p. m. the "Wilmington" discovered smoke to the northeast, and reported the same as the smoke of a steamer to the northeast, to the flagship. At 5.45 p. m. the flagship inquired of the "Indiana," then approaching from the north'ard, "What is the character of the strange vessel," and the reply was, "Merchant vessel." The inquiry was then made? "What colors does the strange vessel carry?" The reply of the "Indiana," at 5.55 p. m., was, "Can not see." Five minutes later, or at six o'clock, the "Indiana" appears to have turned to the northeastward and made full speed toward the "Panama" (the prize) and the "Mangrove." Seven minutes later the prize surrendered and was boarded by the "Mangrove."

The time contemplate' at which the vessel must be within signal distance of the capturing vessel must be the time of capture. A vessel having been in company and left can certainly not be considered as retaining any advantage on account of its past position or relation; nor could a vessel coming up after a capture has been completed take anything from such arrival.

What was the relative position of these other vessels at the time in regard to their being within signal distance of the "Mangrove?"

The changes in the law for the distribution of prize money from "vessels in sight," according to the act of 1800, to that of "vessels within signal distance" of 1862, to "within signal distance under such circumstances and in such conditions as to be able to render effective aid
106 if required," of 1864, implies that it is not sufficient to be within sight, if not within signal distance.

Any of the vessels claiming in this case, if within signal distance, were in condition to render aid, so that the sole and only question is, Were the claiming vessels within signal distance at the time of capture?

The term of signal distance, as here used, seem' to be differently construed by different witnesses. One considers because the capturing vessels could be communicated with by "Very's" night signals, or a search light, she was within signal distance, while others base their opinions upon the distance that day signals could be read.

A careful examination of the testimony of the naval officers through the entire evidence taken in all the prize cases of the late war upon this point shows that it is almost universally considered a distance at which "naval flag signals can be read with glasses," or "naval flag signals can be distinguished with glasses," or "at such a distance as international signals could have been readily and unmistakably read and understood," or words to that effect. What such distance is is a more difficult question. I fail to find any evidence upon that point in any of the recent cases; but in the case of the "R. E. Lee," I Lowell, 36 (F. C., 11691), after careful consideration and examination of much testimony in the case, and in several cases therein cited, it was considered that from five to six miles was the average distance at which flag signals could be read, and eight miles was testified to by one of the witnesses as being the utmost limit of vision in reading naval day signals.

This capture was made in the daytime, and it must be considered that the signal distance must be determined by the circumstances and requirements of the vessels at that time. Night signals or search lights would have been of no value at that time, and the distance between the vessels must be shown to have been such that the "Mangrove" could have communicated with the claiming vessels by ordinary day signals.

107 The testimony of the several witnesses in respect to the distance of the vessels apart is not the result of actual measurement, but are conjectural and matters of opinion only, and must be so considered, particularly when there is such conflict of testimony, and it is more satisfactorily shown by their movements that it can be by the conflicting opinions of the witnesses.

The "Indiana" and "Mangrove," which had been together between 4.30 and 5.00 o'clock, had been moving away from each other for nearly an hour, the one at the rate of about 10 knots, the other about 8 knots an hour, and the distance passed over must have been about 12 or 15 knots at least, or from 14 to 16 miles is but a fair measure of their distance apart. Not only does the time they were going from each other show their distance apart, but at 6 o'clock the "Indiana" starts "in the chase," as it is termed in the testimony, at full speed, or ten knots an hour, for the prize and the "Mangrove." A very few minutes later the prize and "Mangrove" start forward toward the "Indiana" at full speed, and it was three-quarters of an hour before they, approaching each other, came sufficiently near for the "Indiana" to fire a shot across the bows of the prize.

Thus the presumptive distance of the vessels apart may be considered from the time and rate of their leaving and approaching. Does the testimony of the witness raise a different presumption of distance? Not only does it appear from the log of the "Indiana" that at 5.55 p. m. the flag of the prize could not be made out, but Lieut. Dawson of the "Indiana" says, "We proceeded toward the ships and soon made out the stranger's colors to be Spanish." This was after the capture, but just how long does not appear. Eleven witnesses on board the "Mangrove" at the time of the capture positively swear that there was no vessel in sight at the time of the capture, altho' most of them swear they carefully scanned the horizon with glasses. There was only to be seen the smoke presumably of the "Indiana" in the distance

in the southwest. Two of the ship's company of the "Indiana"
108 passengers on board the "Mangrove," one officer, and one petty officer state positively that the "Indiana" was within sight and within signal distance. The statements of some of these witnesses in regard to time and distance are so utterly inconsistent with what is positively shown to have been the facts of the case, that confidence is shaken in them, but in such a positive contradiction of statements and conflict of testimony it seems to be demanded, if possible, that the circumstances be examined and the testimony reconciled if possible, or at least a reason for the discrepancy sought. To declare that the witnesses of either side have wil'fully testified falsely is not a satisfactory conclusion, especially when the character and official standing of many of them is considered, yet such conclusion must be reached unless some explanation of the discrepancy is found. Where one can see a vessel at a distance and another can not, infirmity of sight may account for it and the affirmative testimony be accepted as superior to the negative; but where eleven witnesses, many of them after a careful examination through glasses, testify positively that no vessel was in sight, the testimony of another witness that he saw a vessel coming up rapidly within three or four miles, particularly when it appears that such vessel' approaching each other at full speed were three-quarters of an hour from that time in meeting, loses its presumption of credence as affirmative against the negative; therefore, I have no confidence in the statements of those on board the "Mangrove" that the "Indiana" was so in plain sight at such a short distance and believe the interest and desire was but the father of the thought and opinion. But the testimony of the officers on board the "Indiana" presents a different question. Their positive and direct testimony is that the "Mangrove" and "Panama" were in sight and their opinion and belief is that they were within signal distance. Do the facts justify this belief? Three officers of the prize say that the towers of two vessels came in sight, but one of them could not say exactly when.
109 The "Mangrove" was a smaller vessel than the "Indiana," lower in the water; and the elevation of the bridge and lookout of the latter might enable her to see the former while there was not enough of herself above the horizon to be visible. The "Indiana" was also to the south'ard and westward of the "Mangrove," so that while those from the "Mangrove" were looking into the eye of the sun and upon the shaded side of the "Indiana," those from the "Indiana" had not only the elevation, but the benefit of the light to see the "Mangrove."

I am satisfied that the "Indiana" could not be seen from the "Mangrove," as testified to by the officers and crew of that vessel, but that the latter could be seen and was seen from the bridge of the "Indiana" as testified to.

But being in sight is not enough under the statute to justify a distribution of prize money. A vessel can be seen much farther than signald can be read, and the preponderance of evidence as to the distance the vessels are shown to have been apart by their movements, the failure to make out the flag, the fact that the "Indiana" was so far from the "Mangrove" as to be below the horizon line from her bridge, all satisfy me that she was not within signal distance at the time of capture.

The claims of the "New York" and "Wilmington" present less difficulty. All the testimony relating to any connection of the "Wilmington" with the capturing vessel, at or before the capture, is that at about 5.25 p. m. the smoke of a steamer to the northeast was seen and reported to the flagship and that the "Mangrove" went in chase, followed by the "Indiana." There is no claim or allegation that they were within signal distance, any more than the opinion expressed that they could have communicated by means of "Very's" night signals, or a search light. The next connection had with the prize or capturing vessel was that about an hour and a half after the capture they made the lights of two vessels, and a few minutes after eight o'clock, two hours after the capture, spoke
110 them and accompanied them to the flagship.

The claim seems to be made upon the idea that perhaps the "Wilmington" prevented the possible escape of the prize during the darkness of the night.

It is not considered that such subsequent service is contemplated as entitling one to share in the distribution, and it must be held that the evidence does not show that the "Wilmington" was within signal distance at the time of the capture, and therefore is not entitled to share.

The claim of the "New York" present' the less difficulties. The distance between the "Indiana" and the "Mangrove" at the time of the capture, as hereinbefore shown, is to be increased somewhat to determine the distance between the "Mangrove" and the "New York." Lieut. Decker, of the "Indiana," says "the 'New York' was two or three miles behind us when we started and did not join in the chase." At 5.45 the "New York" signalled to know the character of the strange vessel, and at 5.25 inquired what colors it carried. Not only does every witness on board the "Mangrove," 11 in number, testify that the "New York" was not in sight at the time of the capture, but the officers of the "Indiana" who had every opportunity to determine the question correctly, having been near her a short time before the capture and knowing her position and distance between the two vessels, do not support the claim but positively contradict it. Lieut. Decker, officer on the deck on the "Indiana" at the time, says: "The prize was within sight of the 'New York.' I do not think she was within signal distance of the 'New York,'" and the several witness' of the "Indiana" all testify that the "Indiana" was the only vessel within signal distance. The repeated signals of inquiry from the "New York," as shown by the log, would imply that the strange steamer which had been reported was not so distinctly visible as is claimed later. Ensign Mustin, of the "New York," states that
111 vessel was within signal distance of the "Mangrove," not stating it as a fact, but as a reason saying "as there was a very powerful glass on board," but he does not state that this glass was ever used to learn the character or colors of the stranger. The inquiry by the "New York" of the "Indiana" upon this point is presumptive evidence that the matter' of inquiry were not distinguishable from the "New York," and she approached but very little nearer until after the capture. It is also contended in this testimony that the claim to share is based upon the fact of the speed of the "New York" could have captured her.

As in the claim of the "Wilmington" it cannot be considered that any subsequent contingency that might have arisen can assist in determining the question of whether the vessels were within signal distance.

It is not considered that the opinions of the two witnesses who declare it their belief that the "New York" was within signal distance of the "Mangrove" can overcome the presumption arising from the distance as shown by the movements of the vessels, the inquiries made of the "Indiana," and the positive testimony of fourteen other witnesses, and it is considered that the proofs fail to show that the "New York" was within signal distance at the time of the capture, and that her officers and crew are therefore not entitled to share.

The "Wilmington" is shown to have been about 7 miles from Havana; the prize was captured 24 or 25 miles from that city. I find therefore that the report of the naval prize commissioner that the "Mangrove" was the sole capturing vessel, and that the prize was of superior or equal force, and that no other vessel is entitled to share is fully sustained by the evidence in the case, and a decree of distribution will follow accordingly.

Jacksonville, Fla., June 15th, 1900.

JAMES W. LOCKE, *Judge.*

(Endorsed:) Final decree. Filed June 15th, 1900. E. O. Locke, clerk.

112 In the district court of the United States, in and for the southern district of Florida.

THE UNITED STATES
vs.
THE SPANISH STEAMER "PANAMA" AND CARGO.

This cause having come on to be heard upon the objections to the report of the prize commissioner and the claims of the U. S. S. "Mangrove," "Indiana," "New York," and "Wilmington" for distribution of the prize money herein, and having been heard upon testimony taken and filed herein, and duly argued by counsel for the United States and captors, upon consideration thereof, and in accordance with an opinion herein filed this day, it is ordered, adjudged, and decreed that the U. S. S. "Mangrove" was the sole capturing vessel of the prize steamer "Panama" and cargo; that said prize was of superior or equal force to the capturing vessel; that no other vessel was within signal distance or is entitled to share in said prize, and that the total net proceeds of said prize steamer "Panama" & cargo be, and hereby are, decreed to the officers and crew of said U. S. S. "Mangrove."

Jacksonville, Fla., June 15th, 1900.

JAMES W. LOCKE, *Judge.*

(Endorsed:) Decree of distribution. Filed this 15th day of June, 1900. E. O. Locke, clerk. By Louis Starke, deputy clerk.

113 In United States district court, southern district of Florida.

UNITED STATES
vs.
THE SPANISH STEAMER "PANAMA" AND HER CARGO. } Prize.

Now comes the United States, libellant and appellant in the above-stated cause, and make the following assignment of error, in respect of

the decree and decision of this court in this cause, rendered on the 15th day of June, A. D. 1900, holding that the U. S. S. "Mangrove" was the sole capturing vessel of the Spanish steamer "Panama," and that the prize was of superior or equal force, and that no other vessel than said "Mangrove" is entitled to share in the proceeds of said prize:

First. The court erred in holding that the U. S. S. "Mangrove" was the sole capturing vessel of said "Panama."

Second. The court erred in holding that the prize was of superior or equal force to the capturing vessel.

Third. The court erred in holding that no other vessel is entitled to share in the proceeds of the said prize.

Fourth. The court erred in holding that the "Mangrove" is entitled to the whole of the proceeds of said prize.

Fifth. The court erred in holding that the libellant is not entitled to participate in the proceeds of said prize.

Sixth. The court erred in holding that the United States is not entitled to a moiety of the proceeds of said prize.

Seventh. The court erred in finding that the plaintiff failed to show that the "New York," "Indiana," & "Wilmington" was within signal distance at the time of the capture of the said prize.

J. N. STRIPLING,
United States Attorney.

(Endorsed:) Assignment of errors. Filed Jun. 19, 1900. E. O. Locke, clerk.

114 In United States district court, southern district of Florida.

UNITED STATES
vs.
THE SPANISH STEAMER "PANAMA" AND HER CARGO. } Prize.

Now comes the United States, libelant in the above-entitled cause, by J. N. Stripling, its attorney, and considering itself aggrieved by the decision and decree of this court, rendered herein on the 15th day of June, A. D. 1900, finding that the U. S. S. "Mangrove" was the sole capturing vessel of the said Spanish steamer "Panama," and the prize was of superior or equal force, and that no other vessel than said "Mangrove" is entitled to share in the proceeds of said prize, appears in open court and appeals from the said decree to the Supreme Court of the United States herein.

The said plaintiff presents herewith an assignment of errors complained of, and thereupon prays that its said appeal may be allowed, and that the record may be duly certified to the Supreme Court of the United States, in accordance with the rules and practice in such case made and provided, to the end that the said appeal may be heard and determined by the said Supreme Court of the United States.

J. N. STRIPLING,
United States Attorney.

Upon reading and filing the foregoing notice and prayer of appeal and assignment of errors, the appeal of the said United States is hereby allowed.

June 19, 1900.

JAMES W. LOCKE,
District Judge of the United States, Southern District of Florida.

(Endorsed:) Notice and prayer of appeal and order allowing same. Filed June 19, 1900. E. O. Locke, clerk.

115 District court of the United States, southern district of Florida.

TUESDAY, *June 19th, 1900.*

Present: Hon. James W. Locke, judge.

THE UNITED STATES
vs.
S. S. "PANAMA." } Prize.

Now comes the United States, by J. N. Stripling, its attorney, and presents an assignment of errors, and prays that an appeal may be allowed from the decision of June 15, 1900, that the U. S. S. "Mangrove" was the sole capturing vessel, to the Supreme Court of the United States.

Whereupon, upon consideration thereof, an order allowing said appeal is entered herein.

From district court minute book "C," page 198.

116 District court of the United States, southern district of Florida.

UNITED STATES
vs.
SPANISH S. S. "PANAMA." } Prize. Distribution.

Ordered that the time for filing the transcript in the above cause in the Supreme Court of the United States be extended thirty days from July 18th, 1900.

Done and ordered in open court this 30th day of June, 1900.

JAMES W. LOCKE, *Judge.*

(Endorsed:) Order extending time for filing transcript in S. C. of U. S. Filed June 30th, 1900. E. O. Locke, clerk; by Louis Starke, deputy.

117 United States district court, southern district of Florida.

THE UNITED STATES OF AMERICA
vs.
THE STEAM VESSEL "PANAMA" AND CARGO. } Prize.

I, Eugene O. Locke, clerk of the above court, hereby certify the foregoing pages, numbered from one to 116, inclusive, constitute a true copy of so much of the record, assignment of errors, and the proceedings in

the above-entitled cause as relate to the claim of the captors for prize money, as shown by the files and on record in my office.

Witness my hand and the seal of the said court, in said district, this 24" day of July, A. D. 1900, at Jacksonville, Fla.

[SEAL.] EUGENE O. LOCKE, *Clerk.*

118 In the district court of the United States, southern district of Florida.

THE UNITED STATES
vs.
THE S. S. "PANAMA" AND CARGO. } Prize.

Officers and crews of U. S. S. "New York," U. S. S. "Indiana," U. S. S. "Wilmington," appellants. Officers and crew of U. S. S. "Mangrove," appellee.

Appeal to the Supreme Court of the United States. Apostles.

119 In the district court of the United States in and for the southern district of Florida.

THE UNITED STATES
vs.
THE SPANISH STEAMSHIP "PANAMA." } In prize.

SIR: Please take notice that the application for appeal and assignments of error hereunto annexed, which, on July 13, 1900, were duly filed in the above-entitled cause on behalf of the officers and enlisted men of the U. S. S. "New York," "Indiana," and "Wilmington," will be forwarded to Hon. James W. Locke, of the district court of the United States for the southern district of Florida, for the allowance of the said appeal, during the present recess of the court. The said judge will be requested to fix the amount of the bond to be given on behalf of these appellants at the sum of five hundred dollars ($500), and to order the issuance of citation forthwith.

M'CAMMON & HAYDEN.
GEORGE A. & WM. B. KING,
Proctors for the officers and enlisted men of the U. S. S. "New York," "Indiana," and "Wilmington."

To JEFFERSON B. BROWN, Esq.,
Counsel for the officers and enlisted men of the U. S. "Mangrove."

120 In the district court of the United States, southern district of Florida.

THE UNITED STATES
vs.
THE STEAMER "PANAMA."

Assignment of errors.

Now comes French E. Chadwick, captain in the United States Navy; Henry C. Taylor, captain in the United States Navy, and Chapman C. Todd, commander in the United States Navy, who were at the date of the capture of the "Panama," claimed as prize in the libel herein filed,

the commanding officers of the United States steamships "New York," "Indiana," and "Wilmington," respectively, and on behalf of themselves and of all the officers and men of the said vessels assign error to the final decision and decree of the district court in this cause, rendered on or about the 15th day of June, 1900, as follows:

1. For that the court held and decided that the "Mangrove" was the sole captor of the "Panama."

2. For that the court held and decided that the "Mangrove" was the sole vessel entitled to participate in the distribution of the proceeds of the "Panama" in prize.

3. For that the court failed and declined to hold that the "New York," "Indiana," and "Wilmington," or either of said vessels, were joint captors with the "Mangrove" of the "Panama."

4. For that the court failed and declined to hold that the "New York," "Indiana," and "Wilmington," or either of said vessels, were within signal distance of the "Mangrove" at the time of making the capture of the "Panama," under such circumstances and in such condition as to be able to render effective aid if required.

121 5. For that the court failed and declined to hold that the "New York," "Indiana," and "Wilmington," or either of said vessels, were entitled to share in the proceeds of the "Panama" as prize.

JOSEPH K. MCCAMMON,
JAMES H. HAYDEN,
Proctors for French E. Chadwick, captain and commanding officer, and the officers and enlisted men of the "New York."

GEORGE & WILLIAM B. KING,
Proctors for Henry C. Taylor, captain and commanding officer of the "Indiana," and the officers and enlisted men of said vessel.

GEORGE A. & WILLIAM B. KING,
Proctors for Chapman C. Todd.

(Endorsed:) Assignment of errors. Filed July 13, 1900. E. O. Locke, clerk.

122 In the district court of the United States, southern district of Florida.

THE UNITED STATES
vs.
THE STEAMER PANAMA.

And now comes French E. Chadwick, captain in the United States Navy; Henry C. Taylor, captain in the United States Navy, and Chapman C. Todd, commander in the United States Navy, each of them at the time of the capture of the "Panama" condemned as prize in this cause the commanding officer respectively of the "New York," Indiana," and "Wilmington," on their own behalf and on behalf of the officers and enlisted men of each of said vessels, considering themselves aggrieved by the decision and decree of distribution herein, and alleging errors in said decree, appeal therefrom to the Supreme Court of the United States.

They present herewith an assignment of the errors complained of, and will hereafter present a bond for costs, with surety in such sum as may

be directed by the court, and thereupon pray that their said appeal may be allowed in accordance with the rules and practice in such case made and provided, to the end that said appeal may be heard and determined by the Supreme Court of the United States in connection with the appeal of the United States in the same cause, and upon the record and proceedings duly certified to said court in connection with said appeal of the United States.

JOSEPH K. MCCAMMON,
JAMES H. HAYDEN,
Proctors for French E. Chadwick, captain and commanding officer, and the officers and enlisted men of the "New York."

GEORGE A. & WILLIAM B. KING,
Proctors for Henry C. Taylor, captain and commanding officer of the "Indiana," and the officers and enlisted men of said vessel.

123 GEORGE A. & WILLIAM B. KING,
Proctors for Chapman C. Todd, commander and commanding officer of the "Wilmington," and the officers and enlisted men of said vessel.

(Endorsed:) Prayer of appeal. Filed July 13th, 1900. E. O. Locke, clerk.

Upon reading and filing the foregoing notice, the prayer of appeal, with the assignment of errors and appeal of the aforesaid French E. Chadwick, Henry C. Taylor, and Chapman C. Todd, on behalf of themselves and the officers and enlisted men of the United States steamship "New York," "Indiana," and "Wilmington," their said appeal is hereby allowed, upon their filing herein a proper bond, to be approved by this court, in the sum of five hundred dollars ($500).

July 23d, 1900.

JAMES W. LOCKE.
District Judge.

(Endorsed:) Order. Filed August 4th, 1890. E. O. Locke, clerk.

124 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SPANISH STEAMSHIP "PANAMA." } In Prize.

Know all men by these presents, that we, French E. Chadwick, Henry C. Taylor, and Chapman C. Todd, as principals, and the American Surety Company (a corporation incorporated under the laws of the State of New York) as surety, are held and firmly bound unto the United States of America in the sum of five hundred ($500.00) dollars, to be paid to the said United States of America, for which payment well and truly to be made, we bind ourselves, our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this fifth day of October, 1900.

Whereas, this court, on June 15th, 1900, entered a final decree of distribution in the above-entitled cause, whereby it was adjudged, ordered,

and decreed that the whole of the proceeds of the Spanish steamship "Panama," after deducting therefrom proper costs and expenses, should be distributed among the officers and enlisted men of the United States ship "Mangrove," and an appeal has been taken by the United States to the Supreme Court of the United States; and, whereas, the undersigned, French E. Chadwick, Henry C. Taylor, and Chapman C. Todd, as the representatives of the officers and enlisted men of the United States Navy who served on board the United States flagship "New York," and the United States ships "Indiana" and "Wilmington," respectively, on the 25th day of April, 1898, considering themselves aggrieved by the said decree, did, on the 13th day of July, 1900, file an
125 application for an appeal therefrom to the Supreme Court of the United States, which was, on or about the 4th day of August, 1900, by order of this court, allowed, provided that the said Chadwick, Taylor, and Todd should file a bond with sufficient securities in the penal sum of five hundred ($500.00) dollars, and conditioned for the payment of any costs awarded against them on appeal; now, the condition of the above obligation is such that, if the said Chadwick, Taylor, and Todd shall prosecute their said appeal to effect and answer all damages and costs if they fail to make good their said appeal, then the above obligation shall be void; otherwise it shall remain in full force and effect.

FRED E. CHADWICK.
By JAMES H. HAYDEN, [SEAL.]
Attorney in fact.

HENRY C. TAYLOR,
CHAPMAN C. TODD.
Both by WM. B. KING, [SEAL.]
Attorney in fact.

AMERICAN SURETY COMPANY OF NEW YORK.
By JOHN S. LOUD, [SEAL.]
Resident Vice-President.

[SEAL OF AMERICAN SURETY CO. OF NEW YORK.]

Attest:

LEONARD DAMMANN, [SEAL.]
Resident Assistant Secretary.

[50c. U. S. Doc. Int. Rev. Stamp. Cancelled.]
Washington Agency No. 94.

Taken and acknowledged before

A. S. TAYLOR,
United States Commissioner.

[Seal of A. S. Taylor, U. S. Commissioner, District of Columbia.]

Approved:

JAMES W. LOCKE, *Judge.*

(Endorsed:) Appeal bond. Filed Oct. 8, 1900. E. O. Locke, Clerk.

126 In the district court of the United States for the southern district of Florida.

THE UNITED STATES, LIBELLANT,
vs.
THE SPANISH STEAMSHIP "PANAMA," etc. } In prize.

Stipulation with regard to the record on appeal of Capt. French E. Chadwick, U. S. N., and others.

Whereas by the final decree of distribution entered in the above entitled cause on June 15th, 1900, it was adjudged, ordered, and decreed that the whole of the proceeds of the Spanish steamship "Panama," after deducting proper costs and expenses, should be distributed among the officers and enlisted men of the U. S. S. "Mangrove," and an appeal from the said decree has been taken by the United States to the Supreme Court of the United States, and a transcript of the record or apostles on the said appeal has been made up and certified by the clerk of this court;

And whereas Captain French E. Chadwick, U. S. Navy, Captain Henry C. Taylor, U. S. Navy, and Commander Chapman C. Todd, U. S. Navy, as the representatives of the officers and enlisted men of the U. S. F. S. "New York," and the U. S. S. "Indiana" and "Wilmington," respectively, on July 13, 1900, filed an application for an appeal from the said decree, which was, by order of this court, allowed on or about August 4, 1900;

It is hereby stipulated and agreed that the transcript of record on the appeal of the said Chadwick, Taylor, and Todd shall consist of the following portions of the record only:

(1) The application for an appeal by French E. Chadwick, Henry C. Taylor, and Chapman C. Todd, filed on July 13th, 1900.

127 (2) The assignments of error filed with said application for an appeal.

(3) The order of the district court of the United States for the southern district of Florida allowing said application, entered on or about August 4, 1900.

(4) The bond to secure costs of the appeal of the said Chadwick, Taylor, and Todd, required by the said order; and

(5) This stipulation:

It is further agreed that the appeal of the said Chadwick, Taylor, and Todd shall be heard upon the said transcript of record and the transcript of record on the said appeal by the United States.

This stipulation being made with the understanding that the transcript of record on the said appeal by the United States contains the entire record in the cause, or all proper and material parts thereof, it is provided that if it should be found that the said transcript or record does not contain the entire record in this cause, and that any matter or thing of record herein which is material and necessary for the full and proper presentation of the cause on appeal has been omitted, then the matter or thing so omitted shall, in addition to the papers hereinbefore mentioned, be included in the transcript of record upon the appeal of the said Chadwick, Taylor, and Todd.

In witness whereof we have hereunto subscribed our names the third day of October, 1900.

McCAMON & HAYDEN,
Proctor for Capt. French E. Chadwick, U. S. Navy.
WM. B. KING,
Proctor for Capt. Henry C. Taylor and Commander Chapman C. Todd, U. S. Navy.
JEFFN. B. BROWNE,
Proctor for the officers and enlisted men of the U. S. S. "Mangrove."

(Endorsed:) Stipulation. Filed Oct. 8, 1900. E. O. Locke, clerk.

128 District court of the United States, southern district of Florida.

THE UNITED STATES
vs.
S. S. "PANAMA" AND CARGO. } Prize.

Claim of officers and crews of U. S. ships "New York," "Indiana," and "Wilmington," to share, as against the U. S. S. "Mangrove," officers and crew.

I, Eugene O. Locke, clerk of said court, hereby certify that the foregoing pages numbered from one to nine, inclusive, constitute the record in the said cause as per stipulation therein appearing upon page nine thereof; and together with record heretofore prepared and filed in the matter of the appeal of the United States, in said entitled cause, constitute a full and complete record of the said cause of the United States against the steamship "Panama" and cargo.

In testimony whereof I have hereunto set my hand officially, and affixed the seal of said court, at Jacksonville, in said district, this eleventh day of October, A. D. 1900.

[SEAL.] EUGENE O. LOCKE, *Clerk.*

129 UNITED STATES OF AMERICA, ss.

To JEFFERSON B. BROWNE, Esq., *counsel for the officers and enlisted men of the U. S. S. "Mangrove," greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on Nov. 5, 1900, pursuant to an appeal filed in the clerk's office of the district court of the United States for the southern district of Flòrida, wherein French E. Chadwick, U. S. N., Henry C. Taylor, U. S. N., and Chapman C. Todd, U. S. N., commanding, respectively, the U. S. S. "New York," "Indiana," and "Wilmington," on behalf of themselves and of the officers and enlisted men of each of said vessels, are appellants from a decree entered on June 15th, 1900, in favor of the officers and enlisted men of the U. S. S. "Mangrove," in cause entitled U. S. vs. S. S. "Panama," &c., prize, to show cause, if any there be, why the judgment in the said decree mentioned, entered on the 15th day of June, 1900, should not be corrected, and speedy justice should not be done to the parties on that behalf.

Witness, the honorable James W. Locke, judge of the said district court of the United States, this 10th day of October, in the year of our Lord one thousand nine hundred.

[SEAL.] JAMES W. LOCKE,
Judge U. S. District Court, Southern District of Florida.

Attest:
E. O. LOCKE, *Clerk.*

130 Received this citation October 15", 1900, and on the same day served a true copy hereof on Jefferson B. Browne, esq., counsel for the officers and enlisted men of the U. S. S. "Mangrove."

JOHN F. HORR,
U. S. Marshal.
By FREDERICK W. JOHNSON,
Office Deputy.

(Indorsed:) United States vs. S. S. "Panama" & cargo. Citation to officers and crew of S. S. "Mangrove." Filed Oct. 17, 1900. E. O. Locke, clerk U. S. district court, southern district of Florida.

131 (Indorsement:) File No. 17930. Supreme Court U. S., October term, 1900, term No. 445. The officers, &c., of the U. S. ships "New York" et al. vs. the officers & crew of the U. S. steamer "Mangrove." Citation and proof of service. Office Supreme Court U. S. Filed Oct. 19, 1900. James H. McKenney, clerk.

132 Supreme Court of the United States.

THE UNITED STATES,
vs.
S. S. "PANAMA" AND CARGO. THE UNITED States and officers and crews of "New York" et al., appellants, officers and crews of S. S. "Mangrove," appellee.
} Prize.

The clerk of the U. S. district court, southern district of Florida, having certified that the deposition of Oscar D. Duncan constitutes a part of the record in said cause, and the same having been omitted from the apostles filed, it is hereby agreed on part of appellee that the same, as certified by the clerk of said district court, may be incorporated in the record on appeal.

JEFFN. B. BROWN,
Atty. for Appellee.

Nov. 19, 1900.

We agree to the above:

HENRY M. HOYT,
Asst. Atty. General for the United States.
JOS. K. MCCAMMON,
JAMES H. HAYDEN,
Of counsel for U. S. F. S. New York.

133 (Indorsed:) In the Supreme Court of the United States. The United States, appellant, vs. The Officers and Men of the U. S. S. "Mangrove." Stipulation with regard to the record on appeal. November 19, 1900.

134 In the district court of the United States in and for the southern district of Florida, in admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH STEAMER "PANAMA." } Prize.

Deposition of OSCAR D. DUNCAN, a witness produced and examined on the twenty-ninth day of May, 1898, on board the U. S. S. "New York" on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination, in behalf of the claim of the U. S. S. "New York" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:
My name is Oscar D. Duncan; aged twenty-three years; naval cadet, U. S. Navy; serving now on board the U. S. S. "New York."

2. To the second interrogatory deponent answers:
In the U. S. S. "New York," on duty on the after bridge as signal officer.

3. To the third interrogatory deponent answers:
The "New York" took no direct in either pursuit or capture, but made signals to the "Indiana" concerning the strange vessel.

4. To the fourth interrogatory deponent answers:
The "New York" and possibly the "Indiana" was in signal distance of the "Mangrove" at the time the "Panama" was seized. "In signal distance" here refers to the distance that navy flag signals can be read with a high-powered glass, such as the one furnished to this ship and mounted on the after bridge at the time of the seizure. If the
135 "Indiana" is furnished with a glass similar to the one in this ship there is no doubt that she was "in signal distance" as explained above.

5. To the fifth interrogatory deponent answers:
The "Mangrove" bore about northeast from this ship at the time of seizing the "Panama," and was distant about eight miles. The "New York" was within signal distance as explained in interrogatory No. 4.

6. To the sixth interrogatory deponent answers:
The "New York" was in signal distance at the time of the capture, but was not close to the "Mangrove" until about 9.00 p. m., having chased another steamer in the meantime, this steamer proving to be a neutral.

7. To the seventh interrogatory deponent answers:
As explained in interrogatory No. 4 the "Mangrove" was in signal distance all the time during the chase. When the "Panama" was first sighted the "Mangrove" was within easy signal distance, "within easy signal distance" signifying distance at which the navy flag signals can be read with ordinary binocular glasses, such as those furnished the Navy.

8. To the eighth interrogatory deponent answers:
Signals were exchanged with the "Indiana" as follows: At 5:38 p. m. the flagship made signal "What is the character of the strange vessel bearing east?" At 5.45 "Indiana" replied "Merchant steamer." At 5.47 flagship signaled to "Indiana" "What flag is stranger flying?" At 5.50 "Indiana" answered "Can not see." At 6.05 "Indiana" to flagship, "Strange vessel changed course east." At 6.06 "Indiana" to

flagship, "'Mangrove' near strange steamer," the "Indiana" having approached to within a short distance of this ship before sending the last signal. The chase was in sight at the times mentioned.

9. To the ninth interrogatory the deponent answers:

136 I consider the "New York" was in signal distance of the vessel making the prize, and this ship does claim a share in the distribution of the prize money. In addition to being within signal distance this ship was, at all times during the chase, in position to render assistance if such had been necessary. This ship was by far the fastest naval vessel in sight at the time, and could have overtaken the "Panama" if she had escaped from the "Mangrove." From this vessel both the "Mangrove" and the "Panama" were in plain sight at the time the seizure was made.

10. To the tenth interrogatory deponent answers:

I have no knowledge of any other facts tending to show what vessels of the Navy were or were not in signal distance at the time of the capture.

O. D. DUNCAN,
Naval Cadet, U. S. Navy.

Sworn to and subscribed to before me, this day of May, 1898.

[SEAL.]

F. E. CHADWICK,
Captain, U. S. Navy, Commanding U. S. S. "New York."

(Endorsed:) The United States vs. str. "Panama." Deposition of Naval Cadet O. D. Duncan regarding "New York's" claim to share in "Panama." Filed May 29, 1898. E. O. Locke, Clerk.

137 U. S. district court, southern district of Florida.

I, Eugene O. Locke, clerk of said court, hereby certify that the foregoing three typewritten pages, together with transcripts heretofore certified, constitute a full and complete record in the case of the United States against the steamship "Panama" and cargo, in which the United States is appellant and the officers and crews of the S. S. "Mangrove" is appellee, in the matter of distribution of prize money.

In testimony whereof I hereunto set my hand and affix the seal of said court at Jacksonville, in said district, this October the 25th, A. D. 1900.

[SEAL.] E. O. LOCKE, *Clerk.*

138 (Indorsed:) File No. 17865, &c. Supreme Court U. S. October term, 1900. Term No. 380. The United States, appt., vs. The Officers and Crew of U. S. Steamer "Mangrove" and the Officers and Enlisted Men of U. S. Ships "New York," "Indiana," and "Wilmington," appts., vs. The Officers and Crew of the U. S. Steamer "Mangrove." Term No. 445. Stipulation and addition to record. Filed Dec. 5, 1900.

(Indorsement on cover:) File No. 17865. S. Florida D. C. U. S. Term No. 380. The United States, appellant, vs. The Officers and Crew of the U. S. Steamer "Mangrove." Filed August 8, 1900. File No. 17930. Term No. 445. The Officers and Enlisted Men of the U. S. Ships "New York," "Indiana," and "Wilmington," appellants, vs. The Officers and Crew of the U. S. Steamer "Mangrove." Filed October 13th, 1900.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 24.

THE UNITED STATES, APPELLANT,

vs.

THE OFFICERS AND CREW OF THE U. S. STEAMER "MANGROVE."

No. 34.

THE OFFICERS AND ENLISTED MEN OF THE U. S. SHIP "NEW YORK" AND OTHERS, APPELLANTS,

vs.

THE OFFICERS AND CREW OF THE U. S. STEAMER "MANGROVE."

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

INDEX.

	Original.	Print.
Stipulation as to additional evidence filed May 13, 1902	1	1
Depositions on behalf of appellants	5	2
Deposition of William C. Dawson	7	3
William G. Cassard	102	40
Henry C. Taylor	134	57
George L. Mallery	174	77
Charles Perkins	188	83
Charles E. Murray	197	87
French E. Chadwick	215	96
Depositions, etc., on behalf of appellees	230	104
Deposition of William H. Everett	231	104
Leigh C. Palmer	260	122
John H. Dayton	285	136
Albert C. Chase	309	148
Thorveld Overn	318	153

	Original.	Pr
Depositions, etc., on behalf of appellees—Continued.		
Deposition of Charles Peterson	324	
John Hansen	331	
Charles S. Ellmore	339	
Philip L. Cosgrove, jr	348	
James Jones	368	
John Peterson	371	
William H. Roy	380	
Charles B. Munson	383	
Charles A. Dyson	396	
Exhibit—Synopsis of steam engineering log of "Indiana"	402	
Copies from steam log of U. S. S. "Indiana," with stipulation in regard thereto	403	
Stipulation relative to the hour of sunset at Habana, April 25, 1898	406	
Stipulation as to additional evidence filed October 24, 1902	407	
Stipulation to take deposition of Michael Carlos	409	
Interrogatories	411	
Cross-interrogatories	414	
Instructions to officer taking deposition	416	
Deposition of Michael Carlos	418	
Certificate of officer taking deposition	433	
Stipulation to take deposition of W. C. Blackiston	436	
Instructions to officer taking deposition	438	
Deposition of W. C. Blackiston	440	
Certificate of officer taking deposition	457	
Stipulation to take deposition of Wayne Abbott	459	
Instructions to officer taking deposition	461	
Deposition of Wayne Abbott	463	
Certificate of officer taking deposition	480	
Stipulation to take deposition of Joseph D. Lindsay	482	
Instructions to officer taking deposition	484	
Deposition of Joseph D. Lindsay	486	
Certificate of officer taking deposition	503	
Stipulation to take deposition of Alex. Coffee	505	
Instructions to officer taking deposition	507	
Deposition of Alex. Coffee	509	
Certificate of officer taking deposition	526	
Stipulation to take depositions of W. J. Lee and John Geary	528	
Instructions to officer taking depositions	530	
Depositions of W. J. Lee and John Geary	532	
Certificate of officer taking depositions	550	
Stipulation to take deposition of James Golden	552	
Instructions to officer taking deposition	554	
Deposition of James Golden	556	
Certificate of officer taking deposition	573	
Certificate of examiner	576	
Testimony of Howard A. Kimball	578	
Testimony of Edward F. Maybaum	584	
Testimony of Thomas F. Burns	590	
Certificate of examiner	600	
Testimony of John H. Meehan	602	
Certificate of examiner	606	
Testimony of Littleton W. T. Waller	607	

1 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 130.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," "Indiana," and "Wilmington"
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 174.

Stipulation.

It is hereby agreed this 25th day of February, 1902, that the following depositions and other papers shall be admitted and read in evidence in the above-entitled cause, as duly taken under the order of this court authorizing further proof, entered on the 15th day of April, 1901:

I. Depositions on behalf of the appellants:

(1) Deposition of William C. Dawson, taken on the 22d day of July, 1901, and subsequent days, and a copy thereof may be used in lieu of the original.

(2) Deposition of William G. Cassard, taken on the 21st and 24th days of August, 1901.

2 (3) Deposition of Henry C. Taylor, taken on the 24th day of August, 1901.

(4) Deposition of George L. Mallery, taken on the 26th day of August, 1901.

(5) Deposition of Charles Perkins, taken on the 26th day of August, 1901.

(6) Deposition of Charles E. Murray, taken on the 24th day of October, 1901.

(7) Deposition of French E. Chadwick, taken on behalf of the appellants, the officers and men of the U. S. S. "New York," on the 14 day of October, 1901.

II. Depositions and other papers on behalf of the appellees:

(1) Deposition of William H. Everett, taken on the 22d day of August, 1901.

(2) Deposition of Leigh C. Palmer, taken on the 23d day of September, 1901.

(3) Deposition of John H. Dayton, taken on the 31st day of October, 1901.

(4) Deposition of Albert C. Chase, taken on the 14th day of November, 1901.

(5) Deposition of Thorveld Overn, taken on the 14th day of November, 1901.

(6) Deposition of Charles Peterson, taken on the 14th day of November, 1901.

3 (7) Deposition of John Hansen, taken on the 14th day of November, 1901.

(8) Deposition of Charles S. Ellmore, taken on the 14th day of November, 1901.

(9) Deposition of Philip L. Cosgrove, jr., taken on the 14th day of November, 1901.

(10) Deposition of James Jones, taken on the 14th day of November, 1901.

(11) Deposition of John Peterson, taken on the 17th day of January, 1902.

(12) Deposition of William H. Roy, taken on the 17th day of January, 1902.

(13) Deposition of Charles B. Munson, taken on the 18th day of January, 1902.

(14) Deposition of Charles A. Dyson, taken on the 14th day of February, 1902.

(15) Copies from the steam log of the U. S. S. "Indiana," with stipulation in regard thereto.

(16) Stipulation relative to the hour of sunset at Havana, Cuba, on April 25, 1898.

HENRY M. HOYT,
Assistant Attorney-General.

GEORGE A. KING,
WM. B. KING,
Counsel for U. S. S. "Indiana" and "Wilmington."

McCAMMON & HAYDEN,
Counsel for U. S. S. "New York."

HERBERT & MICOU,
Counsel for U. S. S. "Mangrove."

4 (Indorsed:) In the Supreme Court of the United States. The United States, appl., v. The Officers and Crew of the U. S. S. "Mangrove." No. 130. The Officers and Enlisted Men of the U. S. S. "New York," "Indiana," and "Wilmington" v. The Officers and Crew of the U. S. S. "Mangrove." No. 174. Stipulation.

5 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 380.

THE OFFICERS AND ENLISTED MEN OF THE U. S. ships "New York," "Indiana," and "Wilmington," appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 445.

DISTRICT OF COLUMBIA, *ss:*

Be it remembered that on the 22d day of July, 1901, before me, Martha M. Beck, a notary public in and for the District of Columbia, personally

came William C. Dawson, a witness called to testify on behalf of Captain Henry C. Taylor, commanding the U. S. S. "Indiana," and the other officers and men of said vessel, and by agreement of the parties to said causes, to wit, the United States, appearing by Hon. Henry M. Hoyt, Assistant Attorney-General; the officers and enlisted men of the U. S. S. "Mangrove," appearing by Benjamin Micou, esq.; the officers and enlisted men of the U. S. S. "New York," appearing by James H. Hayden, esq., and the officers and enlisted men of the U. S. S. "Indiana" and U. S. S. "Wilmington," appearing by William B. King, esq.; the said

6 William C. Dawson was then duly sworn to testify truly in the aforesaid causes now pending and undetermined in the Supreme Court of the United States. And the said William C. Dawson, having been by me duly sworn to testify the truth, the whole truth, and nothing but the truth, as aforesaid, did thereupon depose as follows and thereafter, on the 22d and 23d days of July and the 19th day of August, 1901. By agreement of the parties his deposition was taken down in shorthand, and afterward transcribed in typewriting in part by me and in part by Clara M. Loyd, a disinterested amanuensis selected by the parties.

[SEAL.] MARTHA M. BECK,
Notary Public.

7 WILLIAM C. DAWSON, being duly sworn, deposes as follows:

Being interrogated by William B. King, esq., on behalf of the officers and men of the U. S. S. "Indiana," the witness says:

1. Q. State your name, age, and occupation.

A. William C. Dawson; age, thirty years; a captain in the United States Marine Corps.

2. Q. Have you already testified in this case?

A. By deposition I have.

3. Q. Please state whether you were on the U. S. S. "Indiana" on the day of the capture of the Spanish steamship "Panama."

A. I was.

4. Q. What was your position on that day on that vessel?

A. My rank at that time? I was a first lieutenant in the Marine Corps, signal officer of the "Indiana."

8 5. Q. Where were you on the vessel in the latter part of the afternoon, from about 4.30 until dark?

A. I was on the bridge, performing the duties of signal officer.

6. Q. Were you on the bridge when the "Mangrove" received mail from the "Indiana" and left?

A. It is my recollection that I was on the bridge. If not, I was on the upper deck in the neighborhood of the bridge at that time.

7. Q. Did you see the "Panama" during that afternoon?

A. I did.

8. Q. Please state when you first saw her and under what circumstances.

A. I was on the bridge in company with the pilot—named, I think, Munson—a civilian pilot we had taken on board at Key West. The officer of the deck was also on the bridge near us, and shortly before five o'clock we parted with the "Mangrove," giving her mail and instructions to proceed to Key West. We then ourselves proceeded to rejoin

the flagship, the "New York," at that time several miles distant—I don't remember the exact number distant. After parting with the "Mangrove," not long after five o'clock, probably ten or fifteen minutes, we saw a strange steamer to the north and east. When not far from the flagship, a mile or two, probably, she made signals to us; first, as I recall, we made signals to the "New York," "Strange vessel sighted to
9 eastward." The "New York" replied, "What is character of strange vessel," or "What is the nationality," or something like that—I don't remember exactly, but the question was as to the identity of the strange vessel. About that time Pilot Munson and I were watching closely this vessel, and Munson remarked that he believed she was the "Panama," a Spanish steamer that was known, or believed to be, making passage from New York to Havana. He recognized her, having seen her before, he stated to me. Within a minute or two he declared that he was certain she was the "Panama." She was plainly heading towards Havana—that is, in our general direction. About this time, or soon after, we saw that the "Mangrove" was apparently heading towards this strange vessel.

9. Q. What then occurred?

A. When the flagship made the signal to us we replied, I think, she was a steamer, and to the effect that we could not make out her nationality. Upon becoming convinced, as both the officer of the deck and I were by talking with Munson, that she was a Spaniard, and probably the "Panama," her outlines being clearly discernible at that time, the shape of her bow, which I remember was straight, and, as I recall the fact, she had but one smokepipe, we turned hastily, before reaching the New York, putting the helm hard over, and made at once, with all speed, for the steamer above mentioned. I remember making some hasty wigwag signals to the New York in explanation of this sudden move, but am not sure whether they were understood or not,
10 as we were still, I think, a mile or two miles away from the flagship. That was shortly before six o'clock, a few minutes before six, when we turned. Meanwhile the strange vessel was approaching us, and the "Mangrove" making a move to intercept her, both vessels being, I should say, about northeast, or perhaps north-northeast to east-northeast, somewhere within that angle. The "Indiana" was making full speed, between ten and eleven knots, and the "Mangrove" was apparently making her best speed, which was several knots less, I don't remember exactly what—she was considerably slower. At a few minutes after six, as I remember, the "Mangrove" fired a shot across the bow of the "Panama." It was rather wide, and she did not stop. She then fired two more shots, and at the third the "Panama" stopped. The "Mangrove" soon afterwards lowered a boat and sent her alongside the stranger. We continued toward them, and upon getting closer—I should have said that after this boat returned to the "Mangrove" both ships again started—seeing that the Spanish colors were still flying on board the "Panama," we then fired a shot across her bow, upon which her colors were immediately hauled down. Having arrived within hailing distance, the captain communicated with the "Mangrove" and found that he had an officer but not enough men for a prize crew, so we sent on board another officer and fifteen or twenty men. We then proceeded

back to the flagship and reported, and the admiral directed that
11 the prize be taken to Key West, convoyed by the "Mangrove." These orders were carried out.

10. Q. How do you know that the "Mangrove" fired the three shots to which you have testified?

A. I heard the shots fired and saw the smoke from the guns.

11. Q. Please describe what you saw when you say you saw the smoke from the guns?

A. I saw the puff of smoke shoot out from the ship. I don't remember which bow it was from, from either the starboard or port bow; she was turned toward the steamer; probably it was the port bow.

12. Q. Did you hear the guns?

A. I heard them. I heard all three.

13. Q. How do you know that the "Mangrove" lowered a boat as you have described?

A. I saw a boat in the water between the "Mangrove" and the "Panama." I did not see the boat lowered, but did see it in the water proceeding from the "Panama."

14. Q. How did you see this?

A. I was watching both vessels with my glass.

15. Q. What glass did you use for this purpose?

A. I had two, one a binocular—regular navy binocular—and the other a long spyglass that was considerably more powerful than a bin-
12 ocular. I used one or the other as the occasion required. Besides these two, I may add, we had a third type of glass (there were numerous glasses of the two types I have mentioned) stronger than either, that was, if I am not mistaken, about thirty diameters in power, which I as signal officer frequently had occasion to use.

16. Q. Do you know which of these glasses you used to see the boat in the water?

A. I can not remember now. It was almost certainly one of the spyglasses; as the binoculars were only about six or eight diameters magnifying power, being used principally for night work, having a broader field of vision with less power than the long glass.

17. Q. You have referred to various signals made and received on the "Indiana." Can you give any approximation of the movements of the vessel which you have described in relation to those signals?

A. I don't quite understand the question. You mean the movements of the ship as influenced by the signals made?

18. Q. As related to the period, time, and the signals.

A. The signals, flag-hoist signals, between the "Indiana" and the "New York" with regard to the character of the stranger were exchanged, as I remember, between fifteen and five minutes before six. It was during the last quarter hour before six o'clock.

13 19. Q. When did the "Indiana" begin to move toward the "Panama," fixing that time by relation, if you can, to either one of the signals given?

A. It was immediately after the last signal to the flagship that I have described.

20. Q. Between the time the shots were fired from the "Mangrove" and the lowering of the boat from the "Mangrove," were you approaching the "Mangrove" and the "Panama," or receding from them?

A. We were approaching both vessels at full speed, as we believed the "Panama" to be lawful prize if captured.

21. Q. What are the ordinary forms of signal in use at sea in the daytime?

A. Signals between men-of-war are made by means of flags of various shapes, sizes, and colors. There are also other signals called wigwag signals, consisting of motions by flags held in the hand. There are also semaphore signals, which, as adopted by the Navy to some slight extent, consist of motions made with arms or rods of wood attached to a mast and operated by electricity. Did you ask for the common forms? We can communicate with vessels of any nationality by means of the international code, consisting of flag hoists, somewhat similar to the Navy flag code.

22. Q. Can you state in common words how the flags are hoisted in making signals?

14 A. Each flag represents either a numeral or some other particular designation. The flags are bent onto the halyards, one above the other, and when the required number, composed of all the various numerals and other signs, has been made up it is hoisted to the yard arm, the end of the halyard being belayed on the bridge so that the hoist stands nearly vertical in the air, and the number is read from top to bottom. Each number corresponds to a signal in one or the other of the Navy signal books.

23. Q. Which mode of signaling can be seen at the greater distance, the flag-hoist system or the wigwag?

A. That depends largely upon the direction of the wind. Ordinarily the flag-hoist signal could probably be read further than a wigwag, although this would not be the case if, for instance, the wind were blowing directly from one of the signal stations toward the other, in which case it would be difficult to read the hoist, as a broadside view of the flag could not easily be obtained. A wigwag signal, made with a large flag, could be read at a considerable distance, even under those circumstances, because it is made by motions from right to left.

24. Q. What distance can either wigwag signals or flag signals be read at sea?

A. That also depends very largely upon the state of the atmos-
15 phere and the direction and force of the wind, and I have no distinct recollection of ever determining the extreme limit of signal distance, nor do I know that such limit has been determined by actual experiment. I have read signals with a strong glass and the wind blowing the signals at a broad angle with the line of sight at, I should say, a distance of five or six miles—possibly further—but, as I say, the conditions were favorable.

25. Q. How far could a wigwag signal be read in comparison with what you have stated about flag signals?

A. I can't answer with certainty. Probably if made by a man standing at a considerable distance above the water line and using one of the extra large size wigwag flags supplied to men-of-war, the staff of which is perhaps eight feet long, the signal could be read at a distance of four to five miles. That depends also upon the background, as the motions of the flags are, of course, more distinct if relieved by a background of a different color from itself.

26. Q. Please state whether at the time of the lowering of the boat from the "Mangrove" to go to the "Panama" you could have read flag signals from the "Mangrove."

A. At the time of the lowering of the boat?

27. Q. Yes.

A. I could.

29. Q. State the reason for that answer.

16 A. Why, the flags are hoisted high above the ship, usually with the sky for a background, and they stand out to the observer much more distinctly, at least as to the outline, than a small boat on the water several miles distant. The boat and the water at that distance appear to be very similar in color, and the boat was in fact like a speck floating on the water, when a signal given to a ship immediately alongside could usually be read by a powerful glass for the reason above stated.

30. Q. Please state whether at the same time you could have read wigwag signals from the "Mangrove" to the "Indiana."

A. I think it would have been difficult, for the reason that it would have had to be made from the deck or bridge, both of which were much lower than those of the "Indiana."

31. Q. What was the distance, so far as you can state it, between the "Indiana" and the "Mangrove" at the time of the lowering of the boat?

A. I can only estimate from the appearance of the different vessels that it was probably between four and six miles. I can't come closer than that.

32. Q. You have referred to seeing smoke from the guns of the "Mangrove" when she fired. Will you please state whether a flag signal would or would not have been legible at as great a distance as what you saw of the smoke?

17 A. I think it would, and perhaps further, as the smoke I refer to was seen shortly after it left the muzzle of the gun, and was not the haze which rises from the discharge of a gun.

33. Q. Beside the methods of signals which you have mentioned, is there any other method of signaling prescribed by Navy Regulations, or in use in the Navy, for day use not involving sight?

A. Yes. There are sound signals, various forms of which are prescribed by the Navy Department and taught on board ship. These may be called applications of the wigwag visual code to sound, the same elements being used in both systems. The sound signals are made by fog whistle, bells, guns, and I suppose by any other methods of producing distinct sounds at will; but the three which I have named, the whistle, bell, and gun fire, are laid down for use in the Navy signal code. Instead of motions to the right or left of the wigwag visual signals, the same letters are produced by combinations of sounds, such as the discharge of guns, taps of the bell, etc., or toots of the whistle, the letters and other characters produced being the same in both systems.

34. Q. Could any of these sound signals have been used on the part of the "Mangrove" to communicate with the "Indiana" at the time of the firing of the guns on the "Mangrove" or the lowering of the boat?

18 A. Only one, as the "Mangrove" did not have any powerful steam whistle, and the bell, of course, could not be heard at that

distance. The other method—the use of rapid-fire guns—it was possible for her to employ.

35. Q. Who was the officer of the deck you refer to as being with you on deck?

A. Lieutenant Benton C. Decker, of the Navy.

The taking of said deposition not being finished at six o'clock of the said 22d of July, 1901, the further taking of the same is adjourned until four o'clock in the afternoon of the 23d day of July, 1901.

MARTHA M. BECK,
Notary Public.

Pursuant to adjournment, the taking of the deposition of William C. Dawson was resumed on the 23d day of July, 1901, at four o'clock p. m.

Being cross-examined by Benjamin Micou, esq., representing the officers and men of the U. S. S. "Mangrove," the witness says:

36. Q. In this matter of signals, Captain, what are the general methods, or those most generally used, for signals in daytime in the Navy?

19 A. The general method of making official signals between men-of-war is by the use of the flag hoists, referred to in my previous testimony.

37. Q. What other?

A. Unofficial signals between ships, and very frequently official signals also, are made by wigwag.

38. Q. Now, in the reading of the flag signals, contradistinguished from the wigwag signals, does not that depend largely upon being able to distinguish colors?

A. It does.

39. Q. Are not the signals made by flags a combination of colors, dependent upon the arrangement of different colors upon flags?

A. They are.

40. Q. Now, the wigwag signal is made with the flag also, is it not?

A. Made with a flag.

41. Q. But there does it not depend a great deal upon the distinguishing motion of the flag?

A. Yes, sir; that is the principle.

42. Q. It is a system of waving?

A. It is a system of waving, usually flags, but may be made with any other convenient visible object.

43. Q. Then, in order to read understandingly the flag signal

20 you would have to be within distance where you could distinguish the colors of the flags, would you not?

A. Yes, sir.

44. Q. Now, these arrangements of colors make numbers, do they not? These numbers in your books refer to phrases or sentences that give you the meaning of the number, something like a system of shorthand, do they not?

A. Yes, sir. Each combination of flags and pennants (which are flags of different shape, triangular-shaped flags) forms a number which is contained in the signal book, and has a different meaning attached to it.

45. Q. Number three is the most ordinary signal flag, is it not, as to size?

A. As to size? Number three? I think not. My recollection is that number two is the ordinary, but I am not positive.

46. Q. What is the largest size of these signal flags?

A. I don't remember the dimensions.

47. Q. What is the smallest as to size?

A. The number?

48. Q. In size?

A. Well, I don't think that there is any limit to the size. They are small flags, made exactly like the ordinary ones, which are used
21 in what are called boat signals. They are very small sized, but exhibit the same patterns as the ship's flags.

49. Q. You have handled these large signal flags, have you not? Made these signals with the largest size signal flags?

A. I have.

50. Q. What would you say was about the size of these flags?

A. I can only guess, as I have not seen one for over three years. I should say that the largest size in common use would approximate the height of this ceiling; perhaps ten feet in height.

51. Q. And how long—that is, up and down?

A. I should say eight to ten feet. This is as near as I can come to it, within possibly a foot or more in length. They are longer than that, as the shape of the flag, as distinguished from the pennant, is a rectangular oblong. The pennants are about the same length, but are shorter on the hoist—that is, up and down—and triangular in shape, forming a long, narrow triangle.

52. Q. What would you say was the length of these longest flags—these largest flags?

A. Estimating the height to be, say ten feet, the length would be, perhaps, fourteen—thirteen or fourteen.

53. Q. Ten by fourteen?

22 A. Ten by thirteen or fourteen, in that neighborhood.

54. Q. Is not the actual size of these largest flags eight and three-fourths feet by eleven?

A. I do not know. My statements are estimates formed as near as I could make them at this length of time without seeing the flag. I have never seen the exact dimensions written down.

55. Q. Now, I understand you to state that the distance at which you could read a signal, either flag signal or the wigwag signal, depended upon a number of conditions, such as the wind, the view that you could get of the flag, and so on. Am I correct in this?

A. Yes, sir.

56. Q. Now, some of these flags have a ball, have they not, in the middle? In order to read the signal you would have to be able to make out this ball, would you not, to get the combination?

A. If the flag containing that ball formed a part of the signal I would.

57. Q. The colors used are red, blue, and yellow, are they not?

A. Yes, sir.

58. Q. And sometimes white, don't they? It is one of the colors?

23 A. Yellow has replaced white to a large extent in the code, but there are some few pennants that I recall in which white forms

a part, but it is not of very general use. Yellow has taken the place of white, as being more visible.

59. Q. Now, under ordinary conditions, would you not say that you could read the signals with flags further than the wigwag signals?

A. I should say yes, in the ordinary conditions.

60. Q. I understood you to state that you had read signals with a strong glass, and with the wind blowing the flags at a broad angle with the line of sight, a distance of from five to six miles, possibly further. Am I correct in this?

A. I don't remember whether I said possibly further. I remember stating that my recollection was that I had read signals up to five or six miles. That is only an estimate of mine, as the distance was not measured or known at the time exactly.

61. Q. What would you say would be the extreme distance at which under the most favorable circumstances you could clearly read a flag signal so as to readily interpret it?

A. I may say in answer to this that the question of what the signal was enters largely into the matter, as some signals are much easier to read than others. Some signals consist of only two or even one
24 flag in a hoist, while others have four or more.

62. Q. Which would be the more difficult to distinguish at a distance, one with four flags or one with a smaller number of flags?

A. If the signal is flown from the yardarm of an ordinary ship, the fewer the number of flags the easier it will probably be to read the signals, because the more flags there are the greater chance of part of the signal being obstructed in some way.

63. Q. In making signals by flags for other ships to come to your assistance, would these signals usually be with four flags, or with fewer?

A. There are several distinct codes used in the Navy which, to a certain extent, overlap one another, it being possible in numerous cases to signal the same thing by the use of different codes. In answer to this particular question I can only say that I do not know which would ordinarily be used in that case, some of the codes using a greater number of flags than others.

64. Q. At what distance would you say that under ordinary circumstances you would feel sure that you could read flag signals?

A. I should say that, conditions being favorable, I could read
25 the signals with the strong glass I have referred to at from five to six miles. The glass I refer to is the thirty-power spyglass.

65. Q. Is the thirty-power spyglass—the one in common use in the Navy—that you mention, that?

A. It is furnished to all ships for the express purpose of long-distance use. Other glasses are furnished of less range.

66. Q. What do you mean by less range?

A. Of less power, I would better say.

67. Q. That is, that the thirty-power spyglass is the strongest glass in use, as a rule?

A. It is either thirty or thirty-one; I could not be sure which. It is the strongest glass that I know of in the Navy.

68. Q. What was the power of the glasses—the spyglasses—the two spyglasses that you refer to as having been on the bridge, and the binocular glasses?

A. Having been on board the ship?

69. Q. Yes.

A. I did not intend to say that these were in use at that time. They were on board the ship and were commonly used when the strong glass was not needed. They may or may not have been on the bridge at this particular time. These spyglasses were, I think, thirteen in one case. The other I do not remember, but think it was between twenty and thirty.

26 70. Q. Did you not say that in addition to the binocular glasses, that you had at the time of this chase, there was also a spyglass that was more powerful, and that there was still a third spyglass that was stronger, and that which one of these spyglasses you used you could not remember, but that you were almost certain that it was one of the spyglasses?

A. I did make that statement.

71. Q. Now, give me the power, if you can, of these spyglasses—these two.

A. As I have said, there were either two or three varieties of spyglasses on board, of which one, I know, was about thirteen power and another about thirty. I think we also had a glass of intermediate power—between twenty and thirty. On the bridge at the time I had, myself, the thirty-power glass, and another man, one of the quartermasters, I believe, was using one of the other glasses, which one I do not know.

72. Q. Were you looking through one of these glasses at the time that you saw the puff of smoke from the guns of the "Mangrove?"

A. I suppose that I was. I don't recollect whether at that particular moment I was using the glass or not, but I had it to my eye the larger part of the time.

27 73. Q. Were you looking at this smoke at the time that you heard the gun fired?

A. At the time that I heard the gun fired? Possibly not, because I would see the smoke some time before I heard the gun. I may have looked away.

74. Q. Would not the sight of the smoke coming from the gun make you naturally listen with more alertness to hear the report of the gun than you would ordinarily be listening if you had not seen the smoke?

A. No, sir; I think not, because, having seen the smoke, I knew that the report would follow, and had no further particular interest in the sound, as I was probably then watching the [illegible]ant ship to see what the effect would be.

75. Q. How loud did this report sound to you at the distance that you were?

A. I don't remember.

76. Q. Was it such a report as would have attracted your attention if you had been on some other duty than watching this chase—going about the ship?

A. It was.

77. Q. Was it loud enough to attract general attention from the officers and men on board the ship?

A. I don't know. The officers and men around the ship were nearly

all engaged in duties many of which would prevent them from hearing any sounds except the local ones on board the ship, whereas I was
28 high above the deck, on the bridge, away from such sounds.

78. Q. Who was on the bridge with you at the time?

A. I remember the officer of the deck, Lieutenant Decker, was there at the time, and I am quite certain that Pilot Munson was still there—he being beside and talking with me a short time before. I believe that Captain Taylor was also there, but am not positive.

79. Q. Was there any comment made about this shot at the time it occurred by you or any of the other officers who were then with you on the bridge?

A. I do not recall any particular comment made at the time, although I presume such an occurrence would be spoken of by those watching it.

80. Q. Those were six-pounder guns on the "Mangrove," were they not?

A. Yes; I believe so.

81. Q. Was the wind blowing toward you?

A. As I remember it there was a very light breeze from the westward at the time—that is, approximately at right angles to our line of sight.

82. Q. Was the breeze coming from the "Mangrove" in your direction, so as to bear the sound, and was it favorable to the transmission of sound, or otherwise?

29 A. It was, if anything, about at right angles to the line between the "Indiana" and "Mangrove," so that it was neither from nor toward either vessel at the time.

83. Q. Can you distinctly see the smoke from a gun, say a six pounder, further than you can hear the report?

A. I do not remember ever having made that test, and am unable to say.

84. Q. Can you give an estimate of the distance at sea under favorable circumstances at which you can see the smoke from a gun?

A. Do I understand you to mean the smoke at any particular time, or any smoke after the discharge of a gun?

85. Q. The smoke at the time that it belches forth from the muzzle of the gun. How far would you say it could be seen?

A. That also depends on the force and direction of the wind, because very soon after leaving the muzzle, if a breeze is blowing, the smoke is scattered and dissipated.

86. Q. Well, give me an estimate of what you consider the greatest distance that you could see smoke issuing from the muzzle of a gun under the most favorable circumstances.

A. I can only guess, having never made this trial in practice. I would say that, under the most favorable circumstances, as a guess, from four to six miles, but I am not at all positive.

30 87. Q. Are you quite sure that you could make out a flag signal at whatever distance you could see the smoke from the muzzle of a gun?

A. I am quite positive that I could read a flag signal, the conditions being reasonably favorable, at least as far as I could detect the smoke issuing from the muzzle of a six-pounder gun at the instant of discharge; probably further.

88. Q. Do you base your opinion that you could have read the signals of the "Mangrove" upon the fact that you were able to see this smoke?

A. Do I base my opinion that I could read the signals from the "Mangrove?"

89. Q. Do you base your opinion that at the time of capture you would have been able to read the signals from the "Mangrove" upon the fact that you were able to see this smoke?

A. In part I do, but not entirely, because I could have read the signals from her before the guns were fired, and believed so at the time.

90. Q. But you base it in part upon that, do you not, Captain?

A. To the extent that seeing that smoke in the manner that I have described it served as somewhat of a corroboration of my opinion.

31 91. Q. This is your printed statement (page 41 of the Record); is your statement and answers to these interrogatories, is it not?

A. My deposition; yes, sir.

92. Q. Why, in making this statement, is it that you made no mention of having seen the smoke or heard the guns fired from the "Mangrove?"

A. It is my recollection that I did make mention of it, or at least of a gun being fired, which caused the "Panama" to heave to. I suppose I said nothing about the smoke, not considering that it was necessary.

93. Q. Is not this what you said, Captain: "The 'Mangrove' came up with her and apparently communicated with her by means of a boat?"

A. If that is my statement reported in my deposition; yes, sir. To the best of my recollection that statement is correctly reported in the deposition.

94. Q. Now, Captain, you spoke of semaphore signals. Are not these signals that are made by lifting up and letting down an arm at a certain angle?

A. Yes, sir.

95. Q. Do you read that, then, by the angles or by the colors?

A. By the angles.

96. Q. Has not that system been experimented with on the "Alabama" and "Kearsarge" within the last twelve months some

32 time, and reported upon unfavorably, and a new trial being made of it?

A. I do not know. I have no knowledge of the present status of that system.

97. Q. Were they using that system at all in the fleet down there at this time, Captain?

A. It was installed on board at least one of the ships, the "New York," and whether others or any were fitted with it I do not recall.

98. Q. Was it installed on the "Indiana?"

A. No, sir.

99. Q. On the "Mangrove?"

A. No, sir.

100. Q. So that these two ships could not have communicated at all by these signals?

A. No, sir; I made mention of this method of signaling only because the question called for a statement of all the various methods of signaling in use in the fleet at that time.

101. Q. Do you consider that this system was actually in use in the

fleet for practical purposes where the appliances for making the signals were only installed upon one ship?

A. Not in full or general use, except that all ships falling in
33 with the flagship were instructed in the use of this system, and the flagship very frequently, almost daily, in fact, made many signals to the fleet by means of the semaphore, which were undoubtedly read by all other vessels within signal distance. The other ships, however, were not fitted with the same system.

102. Q. Do you consider that you can signal at as great a distance with this system as you can with the flag system?

A. No, sir

103. Q. The flag system then you would call the longest distance system of the visual systems, would you?

A. For daytime?

104. Q. Yes; I mean in daytime.

A. Yes, sir; although I should add that there is another system expressly called long-distance system, the elements of which consist of dark shapes, globular, conical, and cylindrical, which is, strictly speaking, a theoretical code, as ships are not generally fitted out with it.

105. Q. You did not see any such signal as this used during the war?

A. No, sir.

106. Q. Well, now, you mentioned another system of signaling both for night and daytime and that was what you termed sound signals. Do these signals depend upon the distinction of one sound from another?

34 A. Not upon any distinction between degress of sound but upon the intervals—the relative intervals—between the repetition of sounds.

107. Q. Now, as a practical question, are not these sounds used in the daytime only when the conditions are such that visual signals with flags can not be made?

A. That is their general use.

108. Q. Are they not generally used in fogs and mists?

A. The signals with the steam whistle and bell that I refer to are so used. The system of signals by gun fire is intended for use at any time and under any conditions in which other signals, either by reason of the distance or other obstacles, would be difficult to make or understand.

109. Q. As a rule, speaking now of the sound signals other than those made by gun fire, are not those principally signals of warning to give the location of the ship and prevent other ships from colliding with her?

A. No, sir; I do not use it in that sense at all. Both whistle and bell are frequently used for the purpose of giving warning to other vessels, but in steaming in squadron or in any formation when the weather is thick or foggy and visual signals or not easily legible, ordinary communication between vessels is frequently carried on by means of the whistle alone, using a code adapted from what is called the wigwag code, by means of which any signal at all in the signal book
35 can be made.

110. Q. Now, Captain, the principle upon which the sound signals are made in the way that you describe is the same principle upon which you telegraph? Is it not similar to the Morse code?

A. It is similar.

111. Q. Is not the principle the same? I don't mean that the sounds mean the same thing exactly, but it is the same principle?

A. I am not thoroughly familiar with the Morse code; but, from my understanding of it, I should say that the principle was nearly identical.

112. Q. Now, not meaning what it would be possible to do, but asking as to what is actually done aboard ship, do ships spell by sound—one ship to another—with their whistles?

A. Under the conditions I have just mentioned, they do very frequently. I have myself operated the whistle many times in this manner. It is, as generally arranged, operated by electricity; a touch upon the key producing the sound, of long or short duration as desired.

113. Q. Now, don't these sounds have to be very quick in succession sometimes, one or two sounds coming at very close intervals and then other sounds coming at longer intervals?

36 A. Not in the use of the whistle. Allow me to correct that statement. The element of time between the sounds enters into the system and it must be considered in making signals. The letters themselves, however, are formed by producing short and long blasts in certain combinations.

114. Q. What is the best machine or device that you know of for creating these long and short sounds? Is it the whistle that is known as the siren?

A. The siren is a different apparatus. That produces a continuous sound, varying in pitch according as a greater or less amount of steam is used—that is, as the valve is opened more or less. So far as I know, it is never used for the kind of signaling I have described.

115. Q. What is used for the kind of signaling you have described—the sound signals?

A. The steam whistle is used to produce the signals by means of blasts.

116. Q. What are some of the messages that you have sent by this means of signaling—that you have spelled out?

A. I can't recall any at this time.

117. Q. Can not you give some idea of what character of messages they were? What was some message? I don't mean the exact language, but what you inquired about—have actually inquired about by that means of signaling?

37 A. For instance, I have signaled to the flagship—I have made the routine signals to the flagship at noon of the amount of coal on board and expended during the past twenty-four hours; also of the number of sick on board the ship. I have answered inquiries from the flagship in regard to the whereabouts of a vessel of the suqadron which apparently was not in position in formation, and I have sent and received long messages, sometimes for practice and at other times having practical significance. I do not now remember what their nature was.

118. Q. Captain, were these messages sent by spelling out according to a written code that you kept aboard the ship for that purpose, or were they merely signals which at that particular time and occasion had been agreed upon to mean a particular thing, just as a word might be given as a countersign for the day?

A. They were in general composed of words spelled out by means of

the whistles, as I have described. Other symbols and calls of various kinds were also used, but to a very limited extent as compared with visual signals. The substance of the message itself was nearly always spelled out, letter by letter, in a manner exactly similar to that employed in using wigwag signals or flags.

119. Q. Now, if I understand you rightly, you stated yester-
38 day that anything that would make a distinct sound could be used to spell out these messages and words with?

A. As I remember it, I stated that that was possible.

120. Q. Have guns ever been used, so far as you know, for the purpose of spelling out words and making these distinct sounds which you have described as being made with the guns aboard ship?

A. I think they have, as their use is officially authorized by the Navy Department.

121. Q. Well, do you think they have ever been so used? Can you name any occasion and place?

A. I can not name any particular occasion; it is not within my knowledge.

122. Q. The Navy regulations require officers to be instructed in signaling, do they not?

A. They require certain officers to be instructed.

123. Q. You, as signal officer, also have had these instructions?

A. Yes, sir.

124. Q. Well, were you ever instructed, or have you ever known of any officer being instructed, in the use of guns in that way that you speak of?

A. I have been instructed, and have myself instructed the sig-
39 nal men and boys of whom I had charge, in their use, but have not carrried such instruction on practically.

125. Q. That is, instructed them that guns could be used in that way, but never made any actual signals with guns that way, and you never received any actual signals with guns in that way?

A. I have not.

126. Q. Do you think that there is any signaling of *the* that kind that could have been done by the guns of the Mangrove that would have been recognized by you, or by any officer aboard, as a signal so that you could read and understand what the signal was as distinguished from the fact that an engagement might be going on?

A. I think that under those circumstances the firing of guns in itself would operate as a signal, and that a ship situated as the Indiana was would under any circumstances have proceeded at once in the direction from which the sound came, without waiting to distinguish which of the two meanings was intended.

127. Q. That is, Captain, that the knowledge of firing would mean that there was something going on, and to any officer would indicate that if he wanted to be in the engagement he must hurry up to get there. Is not that about all the substance, or all the meaning, that that sort of thing would have?

A. That is under these actual conditions at that time.

40 128. Q. At any time?

A. I would say "No," not at any time, because there might

be situations in which the sound of a gun firing in a certain direction could fairly be interpreted as meaning only one thing—signals.

129. Q. Well, would not that be a case where it had been agreed upon for the occasion that one gun meant one thing and two guns meant another thing? Could you tell, for instance, from the firing, probably, whether the ship was firing a salute until the number of guns stopped, or whether it was trying to spell out words?

A. I could tell instantly the difference between a salute and the signals by gun-fire, because in a salute the guns are fired at regular intervals of time by a watch, whereas if signaling by gun-fire the intervals are not the same. If they were, the message could not be read.

130. Q. Do you consider that, without any practice, or we will say with such practice as officers in the Navy have had at spelling out words by sounds, that there is any officer who could fire these guns in such a way as to spell out intelligibly a message to an officer on any other ship?

A. I consider that officers who have been trained as signal officers, and acted as such for a reasonable time, could, with the assistance, of course, of signal men to do the actual firing, make perfectly intel-
41 ligible signals in this manner. The difference between the use of guns and that of the whistle is only in the method of producing the elements of letters and the intervals between words. In a gun signal one gun is the equivalent of a short toot on the whistle, and two guns in, I will say, comparatively rapid succession correspond to a long blast with the whistle, etc.

131. Q. Now, Captain, my question is not whether you could devise a system by which you could do this thing with guns. My question is, could you, with the experience that you have had in the Navy, with the practical working of this to-day, if you were called upon to-morrow, send a signal with guns that would be understood by any other signal officer? I don't mean by that that he would understand it as a signal, but that he would be able to intelligently read and interpret your signal.

A. I believe that I could, if the other signal officer had been accustomed to the use of any sound signals.

132. Q. Do you believe that you could have interpreted on board the "Indiana" a signal made by guns fired from the "Mangrove" asking you in what direction the flagship was?

A. If the signal had been made as described in the tactical signal book, I believe that I could.

133. Q. Does the tactical signal book prescribe signals of this
42 kind to be made with guns, or just without mentioning the instrument that you make them with?

A. It mentions specially three methods of making sound signals. They are the use of guns, with whistles, and with the bell. These three are prescribed in the official book, and are required to be taught on board naval vessels.

134. Q. Now, you say that you believe that you could have read such a signal as I have mentioned just now from the "Mangrove"?

A. If it had been properly made; yes, sir.

135. Q. Are you satisfied beyond all doubt that you could have read such a signal?

A. I can only say that I was at the time thoroughly familiar with sound signals, and had such a signal been properly sent I am confident that I should have been able to understand it.

136. Q. Do you consider that there was any officer on board the "Mangrove" who could properly have sent such a signal?

A. There were present besides the commanding officer at least two line officers of the Navy on board the "Mangrove," an ensign and a naval cadet, both of whom were watch officers on board, and as such had frequent occasion to make signals of various kinds. They were provided with the regular signal books, and, while I do not know their
43 actual qualifications, officers of their rank should have been familiar with all the known methods of signaling.

137. Q. Do you consider, taking into consideration that you have never made or attempted to make these signals with guns, that you have never known of an instance in the Navy when as a practical matter such signals were made that you could have made these signals properly?

A. I do, because there is no particular difficulty about making these signals with capable signal men, such as are found on board every ship. The making of the letters or numbers does not at all depend upon the ability to fire one gun with the rapidity and accuracy required in producing these elements, more than one gun being used.

138. Q. And you, under the circumstances that existed there, had you heard guns firing from the "Mangrove" making such a signal as that, would you have been satisfied beyond all doubt of what the signal was, if made properly? Are you satisfied, beyond all doubt, that you could have read this signal, and are you satisfied that you would not have confused it with an engagement that was going on; that you would have known—have been able to have read intelligently what they were spelling out with these guns?

A. At the actual time?

139. Q. Yes.

44 A. I probably would not have known at first whether a signal was intended or something else. My interpretation of the firing would then have depended upon the character—upon its subsequent character and amount, particularly as regards the frequency and intervals between the shots.

140. Q. Now, Captain, if, as you state, you are not sure that you would have known at the beginning, would you have known at the end so as to read this signal intelligently? In other words, like taking down in shorthand what a man is saying, if you did not get the beginning would you have been able to get the message intelligently afterwards?

A. No, sir; my meaning is this: At first I should not have known whether the "Mangrove" was attempting to make a signal or not; then, I would certainly have discovered very shortly her intention; if I had found that she was calling the "Indiana" for the purpose of signaling I would then have answered her, and she would have proceeded with her signal. A ship does not begin to signal another and continue to the end without herself being assured in the prescribed manner that her call was understood.

141. Q. Now, Captain, is it one of these sound signals with the gun that you are satisfied you could have read from the "Indiana" that puts this ship, according to your idea, within signal distance?

45 A. No, sir; when I use the expression "signal distance," I have particular reference to visual signals.

142. Q. Which particular visual signal of the daytime signals?

A. Visual signals of the daytime of any kind.

143. Q. What about the wigwag signals? Do you believe you could have read those from the "Indiana?"

A. I believe not.

144. Q. Then the two daytime signals, that in your opinion you could have read, would have been the gun signal and the flag signal?

A. Yes, sir.

145. Q. Now, would it not be an impossible thing, in your opinion as a signal officer, to undertake to establish a practical sound signal made by guns in time of war? Would not the danger of confusing these signals with firing make it an impossible thing to do?

A. It would if the circumstances were such as to force the listener to depend entirely upon his hearing of distant gun-fire, having no knowledge whatever of any of the circumstances attending the firing of the guns. In other words, if he did not see, or had no knowledge of, the vessel from which the firing came, or of the presence of other vessels in the vicinity, it would be very difficult.

46 146. Q. You say that your officers are instructed in signaling. Are officers selected as signal officers, or are not all Navy officers instructed in signaling?

A. All line officers of the Navy and marine officers on board ship are more or less familiar with the various forms of signaling. The officers of higher rank, of course, not having the practice of it, are less familiar than the watch officers and junior officers.

147. Q. What I mean is this: Officers are not selected to give their time to signals and signaling and other officers of the same age and same corps not instructed in that. That is part of every watch officer's instruction, is it not?

A. It is a part of his general instruction.

148. Q. What I want to get at is this: Have you had any particularly different instruction in signaling from that which other officers of the line of the Marine Corps and of the Navy of your rank and age would ordinarily have in their line of duty?

A. Not more than a great many others ordinarily afloat; more than some others, because I was signal officer of the ship for a period of perhaps a year and a half, and, therefore, had more practical daily experience in fact than a number of officers of my rank, who were not so situated.

47 149. Q. Have you ever been an instructor in signaling in the Navy?

A. Yes; to the extent that all officers placed in charge of signals are required to teach their subordinates the practice of their duty.

150. Q. Outside of the matter of ordinary signals, of the ordinary sound signals laid down for use in fogs to prevent collisions and locate other vessels and a few fixed things such as two guns mean this, three guns mean that, is not this entire matter of sound signaling in the way of preliminary instruction so to speak? Is it used to any extent in actual daily service?

A. I can only say that I was at the time thoroughly familiar with sound signals, and had such a signal been properly sent I am confident that I should have been able to understand it.

136. Q. Do you consider that there was any officer on board the "Mangrove" who could properly have sent such a signal?

A. There were present besides the commanding officer at least two line officers of the Navy on board the "Mangrove," an ensign and a naval cadet, both of whom were watch officers on board, and as such had frequent occasion to make signals of various kinds. They were provided with the regular signal books, and, while I do not know their
43 actual qualifications, officers of their rank should have been familiar with all the known methods of signaling.

137. Q. Do you consider, taking into consideration that you have never made or attempted to make these signals with guns, that you have never known of an instance in the Navy when as a practical matter such signals were made that you could have made these signals properly?

A. I do, because there is no particular difficulty about making these signals with capable signal men, such as are found on board every ship. The making of the letters or numbers does not at all depend upon the ability to fire one gun with the rapidity and accuracy required in producing these elements, more than one gun being used.

138. Q. And you, under the circumstances that existed there, had you heard guns firing from the "Mangrove" making such a signal as that, would you have been satisfied beyond all doubt of what the signal was, if made properly? Are you satisfied, beyond all doubt, that you could have read this signal, and are you satisfied that you would not have confused it with an engagement that was going on; that you would have known—have been able to have read intelligently what they were spelling out with these guns?

A. At the actual time?

139. Q. Yes.

44 A. I probably would not have known at first whether a signal was intended or something else. My interpretation of the firing would then have depended upon the character—upon its subsequent character and amount, particularly as regards the frequency and intervals between the shots.

140. Q. Now, Captain, if, as you state, you are not sure that you would have known at the beginning, would you have known at the end so as to read this signal intelligently? In other words, like taking down in shorthand what a man is saying, if you did not get the beginning would you have been able to get the message intelligently afterwards?

A. No, sir; my meaning is this: At first I should not have known whether the "Mangrove" was attempting to make a signal or not; then, I would certainly have discovered very shortly her intention; if I had found that she was calling the "Indiana" for the purpose of signaling I would then have answered her, and she would have proceeded with her signal. A ship does not begin to signal another and continue to the end without herself being assured in the prescribed manner that her call was understood.

141. Q. Now, Captain, is it one of these sound signals with the gun that you are satisfied you could have read from the "Indiana" that puts this ship, according to your idea, within signal distance?

45 A. No, sir; when I use the expression "signal distance," I have particular reference to visual signals.

142. Q. Which particular visual signal of the daytime signals?

A. Visual signals of the daytime of any kind.

143. Q. What about the wigwag signals? Do you believe you could have read those from the "Indiana?"

A. I believe not.

144. Q. Then the two daytime signals, that in your opinion you could have read, would have been the gun signal and the flag signal?

A. Yes, sir.

145. Q. Now, would it not be an impossible thing, in your opinion as a signal officer, to undertake to establish a practical sound signal made by guns in time of war? Would not the danger of confusing these signals with firing make it an impossible thing to do?

A. It would if the circumstances were such as to force the listener to depend entirely upon his hearing of distant gun-fire, having no knowledge whatever of any of the circumstances attending the firing of the guns. In other words, if he did not see, or had no knowledge of, the vessel from which the firing came, or of the presence of other vessels in the vicinity, it would be very difficult.

46 146. Q. You say that your officers are instructed in signaling. Are officers selected as signal officers, or are not all Navy officers instructed in signaling?

A. All line officers of the Navy and marine officers on board ship are more or less familiar with the various forms of signaling. The officers of higher rank, of course, not having the practice of it, are less familiar than the watch officers and junior officers.

147. Q. What I mean is this: Officers are not selected to give their time to signals and signaling and other officers of the same age and same corps not instructed in that. That is part of every watch officer's instruction, is it not?

A. It is a part of his general instruction.

148. Q. What I want to get at is this: Have you had any particularly different instruction in signaling from that which other officers of the line of the Marine Corps and of the Navy of your rank and age would ordinarily have in their line of duty?

A. Not more than a great many others ordinarily afloat; more than some others, because I was signal officer of the ship for a period of perhaps a year and a half, and, therefore, had more practical daily experience in fact than a number of officers of my rank, who were not so situated.

47 149. Q. Have you ever been an instructor in signaling in the Navy?

A. Yes; to the extent that all officers placed in charge of signals are required to teach their subordinates the practice of their duty.

150. Q. Outside of the matter of ordinary signals, of the ordinary sound signals laid down for use in fogs to prevent collisions and locate other vessels and a few fixed things such as two guns mean this, three guns mean that, is not this entire matter of sound signaling in the way of preliminary instruction so to speak? Is it used to any extent in actual daily service?

A. The signal by the steam whistle that I have mentioned is in constant use. Did you ask me as to whether there was any use for that?

151. Q. As to all uses for these purposes that I have mentioned. You mention only one of the two special signals.

A. I would answer that when vessels of the Navy are associated in weather which prevents the use of visual signals, for instance very foggy weather, the use of the steam whistle for communication among them is very frequent, especially if steaming in squadron under such conditions of weather. Sound signals are then the only means of making reports to the commander-in-chief and of conveying orders from him to one or all of the vessels. They are constantly used for these purposes.

48 152. Q. Are these signals that you speak of spelling signals? Do they spell out words?

A. They are both words and numeral signals.

153. Q. Which are they principally?

A. They are principally spelling—spelling out words.

154. Q. Now, Captain, how long—how much duty have you had in all as a signal officer?

A. I don't remember exactly. I think nearly two years.

155. Q. Now, in the course of this experience, about how many times would you say you had had occasion to use these sound signals for the purpose of spelling out words from one ship to the other, not in practicing men under you, but in the actual naval operations in which you were engaged?

A. I have no definite idea of the number of times. I know that I was aboard the "Indiana" during all the time of my service as signal officer, and that a large part of that time we were in squadron, manœuvering at various points on the Atlantic coast, and steaming in squadron between those points, and that while so doing whenever the weather was foggy we had recourse to the whistle signals for the purpose of communicating on practical matters with the other ships. The number of times when the use of these signals was required was

49 not large as compared with the times when such signals were not.

156. Q. Is not this system that you speak of, the wigwag system by sounds spelling out these words, is not this something that has proved so unsatisfactory as to have become somewhat obsolete?

A. I have no knowledge of the present status of the various systems of signals in the service, having been on shore during the last two years and a half, but when I left the "Indiana," in November, 1898, I had never heard that the use of fog signals was considered obsolete. I do not know what would take the place of them under the conditions for which they were devised.

157. Q. Do you mean to say that they spell out by use of this sound system all the usual signals that you make with the flags in the Navy, and that in foggy weather these same communications go on from ship to ship by means of these sound signals that go on in clear weather when you can use the flags; that ships are not circumscribed in this foggy weather so that really their principal occupation is to keep from running into each other, and that these signals are all based on the idea of preventing them from colliding?

A. As with the wigwag method by flag, signals are made with whistles, using both the code to spell words, and by the use of certain combinations of sounds numbers are made instead of letters, which
50 refer to signals in the general signal book. Thus by these means it is possible and practicable to send messages composed of words spelled out, or to transmit numbers by means of individual numbers, just as in the wigwag code, so that the general book can be used. It is true, however, that the use of these signals is limited on account of the great length of time necessary to transmit the messages, and the fact that usually not more than one ship at a time can make such signals. They do not apply only to the prevention of collisions, having no connection with the warning signals also made with the whistle prescribed by international law and used for such purposes.

158. Q. Now as to the manner of making these signals—these sound signals with guns. Do you consider that a ship is in signal distance whenever you can hear the sound of her guns?

A. No; unless the sounds can be distinctly heard and clearly separated, one from another, by the ear; that is, in such a manner that intervals between them of different lengths could readily be detected.

159. Q. Do you know as a practical question what distance would be the extreme at which these distinctions of sounds by guns could be detected?

A. I do not.

160. Q. Now, Captain, as to the boat that you saw in the water
51 going from the "Mangrove" to the "Panama." Did you see that boat lowered from the "Mangrove?"

A. No, sir.

161. Q. How far away from the "Mangrove" was it when you saw it?

A. I don't think I can say positively at this time.

162. Q. You cannot recall the distance?

A. My recollection is that I saw this boat, which appeared to be no more than a speck on the water, somewhere between the two ships.

163. Q. Could you see whether it was going or coming when you saw it?

A. It appeared to me to be going toward the "Panama."

164. Q. Did you see it reach the "Panama?"

A. No, sir; I don't recall seeing it reach the "Panama."

165. Q. Was it one of those things that you see only for a second and then you lose sight of it, or could you see it steadily moving along like a ship?

A. It was, of course, very low in the water and dark in color, so that its movements were not distinct as those of a ship at the same distance would have been.

166. Q. Do you think it probable that you would have noticed this at all if it had not been moving? Was not that what attracted you, something moving on the surface of the water?

52 A. I don't know whether it was prominent enough or not to have attracted my attention.

167. Q. You were, of course, familiar with the "Mangrove;" she was in and out of the fleet all the time, was she not?

A. Yes.

168. Q. How large were these boats that you refer to?

A. The small boats?

169. Q. Yes.

A. I never knew their exact length. Boats of different sizes are carried in the Navy.

170. Q. What is the usual length, so far as you can estimate it? I don't mean in feet and inches. About how long do you think it was?

A. I judge that the "Mangrove" would have carried a boat of perhaps twenty feet or more in length. That is a small boat for a Navy cutter.

171. Q. When these boats are not in use in the water, they hang from the davits on the deck?

A. It is my recollection that they did on the "Mangrove." There are also other places for stowing boats.

172. Q. You could not at the distance which you were distinguish the outlines of a boat on the deck of the ship, could you? Have you ever done so?

53 A. I think not. I have no recollection of having seen it.

173. Q. You say this looked like a speck in the water?

A. It was very small.

174. Q. Were you satisfied at the time that this was a boat?

A. That was the only impression that I got from it, that it was a boat.

175. Q. Of course, afterwards, when the "Panama" was brought in and you learned that she was a prize, you must have learned that a boat had passed backward and forward between them. That is the ordinary custom?

A. It is customary.

176. Q. What I mean is, was it anything after the capture that made you think of this speck as being a boat, or did you think it was a boat at the time you first saw it?

A. Seeing anything passing, moving in the water between two ships, at that place and time, would have produced no other impression than that it was a boat. I could have conceived of nothing else that would be moving between them.

177. Q. But did not the knowledge afterwards of this capture confirm in your mind that this was a boat?

A. Well, it may have had the effect of assuring me that what

54 I had seen apparently passing from one ship to the other was a boat.

178. Q. You also, in your testimony, have the expression, "The 'Mangrove' came up with her and apparently communicated with her by means of a boat." Now, did you mean by that that there was some doubt in your mind as to whether a boat actually passed, or whether you saw a boat pass?

A. I suppose I meant that, seeing the two vessels lying not far apart, and an object proceeding in the direction of the "Panama" from that of the "Mangrove," knowing that both vessels had stopped, it gave me the impression that the "Mangrove" was communicating with the "Panama" by a boat.

179. Q. On the afternoon of April 25, 1898, was the "Indiana" on her station on the blockade—I mean at the time that the "Mangrove" came alongside and got the mail?

A. I don't remember at this time whether we were or not. My recollection is that we were somewhat to the northward of our regular station, because I know that the "New York" was not only to the westward but also to the southward of us.

180. Q. What were the limits of your regular station on the blockade?

A. They were defined by certain bearings, compass bearings, taken on Morro Castle at the entrance to Havana Harbor. What these
55 bearings were I do not now recall. We were somewhat to the eastward of the Morro and some miles, varying from perhaps four to six, or more, from shore.

181. Q. Do you mean by that that your station was to patrol the shore for a distance of from four to six miles?

A. No, sir.

182. Q. What do you mean, then, by your station?

A. I mean that our distance from the shore was, I think, from four to six miles, and that our easternmost and westernmost limits were fixed by compass bearings of the Morro, which bearings I do not remember.

183. Q. Do you remember about the limit, in miles, of this space fixed by the compass bearings that you were to patrol?

A. Only approximately. I should say that we patrolled the space of several miles—perhaps five to ten.

184. Q. Do you know what ship had the next station to the westward of you?

A. At that time, I believe, the "New York."

185. Q. Do you know what station the "Wilmington" had? Was she beyond the "New York" to your westward, or was she to your eastward?

A. I think she was to the eastward of us.

186. Q. What hours were you on duty on the bridge this afternoon—at what hour did your duty begin?

56 A. I don't remember the exact hour at which I went up on the bridge, as I did not stand any fixed watch.

187. Q. Were you on the bridge when the "Mangrove" came alongside of the "Indiana" to deliver mail and to take off mail?

A. I was either on the bridge or some part of the deck, I do not know which. I was above decks.

188. Q. This extract in the record from the log of the "Indiana" states that "At 4.30 p. m. made signals to the 'Mangrove' and she came within hail and was given orders to proceed to Key West after receiving mail." Does this correspond with your recollection of the time that the "Mangrove" came alongside?

A. It was about that time of day, shortly before five o'clock. I don't remember nearer than that.

189. Q. Do you know which way the "Mangrove" went when she got her orders and left? What direction did she take?

A. Only very generally, as I have no distinct recollection of seeing her start at that time. She would have headed in a general northerly and westerly direction.

190. Q. Is Key West northwest from Havana?

A. Not from Havana, but we were to the eastward of Havana at this time, as I remember.

191. Q. When you say that she would have headed in a general
57 northwesterly direction, do you say that because of your idea of the direction that she would naturally take to reach Key West?

A. I say it because that was the general direction of Key West from the place where we were lying. Whether she started immediately in that direction I do not remember.

192. Q. Is not Key West to the northeast of Havana?

A. I think the direct course from Havana to Key West is about north a quarter east, or north a quarter west; which, I don't remember at this time. It is only about a quarter of a point east or west of north.

193. Q. And if it was a quarter of a point east would you not have to go a good way to the eastward of Havana for a ship going to Key West to start for the northwestward?

A. I don't think that I used the expression northwestward. Northward and westward was what I intended to say, which is a general term covering a direction anywhere in the northwestern quadrant of the compass.

194. Q. You did not notice which direction she went?

A. I have no recollection now of doing so.

195. Q. Well, shortly after five o'clock the "Indiana" headed for the "New York," did she not?

A. Yes, sir.

196. Q. Was the "New York" then in sight?

A. I don't remember.

58 197. Q. How far off would you say she was at this time, from your best recollection of what subsequently occurred, including the signaling with the "New York"?

A. I think she may have been then ten miles distant; possibly not more than six, but am not positive as to her exact distance.

(Counsel for the officers and men of the "Indiana" objects to this question on the ground that it is not a proper cross-examination, the witness not having been called to testify in regard to the position or distance of the "New York," or the relations of that vessel to the capture.)

198. Q. You stated in your direct examination, did you not, that your ship headed for the "New York," and that afterwards signals were exchanged with the "New York"?

A. I did.

199. Q. Was the "New York" in sight when you headed for her?

A. Yes, sir.

200. Q. This was before the capture, after the "Mangrove" left?

A. No, sir. I think I have answered that I don't remember. She may have been, but I don't recall whether I saw her at that moment or not.

59 201. Q. How long had you probably been headed towards the "New York" when you first sighted the "Panama"?

A. I should say between fifteen minutes to half an hour, perhaps fifteen or twenty minutes. It was not a long time.

202. Q. You stated, in answer to the interrogatory, that the "Panama" when sighted appeared to be headed toward Havana, and was some six or seven miles from you. Did you refer then to this time you have just mentioned when you first sighted the "Panama" when she was six or seven miles from you?

A. That the "Panama" was six or seven miles distant? What I suppose I referred to in that answer to the interrogatory at the time, what I mean now, is that when we first made her out, and made out the direction in which she was going.

203. Q. When you first made out the direction in which the "Panama" was going?

A. As I said in my deposition.

204. Q. Was the "Mangrove" in sight when you first sighted the "Panama?"

A. She was.

205. Q. Was she between you and the "Panama," or was the "Panama" between you and the "Mangrove"?

A. My recollection is that the "Panama" when we first sighted her was to the eastward of both of us, both the "Indiana" and the
60 "Mangrove." Whether the "Mangrove" was in a line, or nearly so, between us and the "Panama," I don't recall.

206. Q. Now, at the time of the capture, did the "Panama" pass the bow of the "Mangrove" and come between you and the "Mangrove"?

A. I can not say whether she had taken this direction. I am not certain, but I think that the "Mangrove" was somewhat astern of the "Panama," which was headed in our general direction.

207. Q. Now, you state, that "as the latter," referring to the "Panama," "approached a little nearer to us her rig became recognizable, and Pilot Munson, who was on the bridge beside me, remarked that the vessel looked to him like the "Panama." Now, after you first sighted the "Panama," and while you were continuing on your course headed straight for the "New York," did you continue to approach a little nearer to the "Panama" so that you got a better view of her?

A. The "Panama" was approaching us all this time.

208. Q. What I mean is, was your ship and the "Panama" getting closer together?

A. They were getting closer together.

209. Q. Well, would you say that it was before or after Pilot Munson remarked that that looked like the "Panama" that you were within six or seven miles from her?

A. Why, I should say that it was before. I should say that he
61 made this remark a few minutes after the "Panama" was distinctly visible.

210. Q. Would you say that he made it before or after the time at which you gave this estimate here of being within six or seven miles of her?

A. I should say that he made it after that.

211. Q. Now, from that time on, as you approached the "New York," up to the time that you turned and made directly for the "Panama," did you continue to get closer or further off from the "Panama?"

A. The distance between us was, if anything, I should say, growing less, as my recollection is that we were headed pretty near south, and the "Panama" was steaming—I don't remember the exact direction—south and west.

212. Q. At the time you turned to go directly towards her you had not lost any on her, had you? You would not say there had been no distance lost between the two vessels?

A. I should say not. You mean that the distance did not become greater? I think not.

213. Q. Well, now, when you turned, I understood you to say that you made directly for the ship. Did you?

A. Yes, sir. I would say in a direction, as is always done in such cases, to head her off.

214. Q. Well, after the "Mangrove" captured the "Panama," did she come towards you with the "Panama?"

62 A. They both started about together and headed in our direction—that is, apparently making for us.

215. Q. How far would you say that you were from the "New York" at the time that you turned to go directly toward the "Panama?"

A. To the best of my recollection, a mile or two.

216. Q. You stated in your former testimony, if I remember rightly, you turned just before the last of these signals passed between the "New York" and the "Indiana." Is that correct?

A. We turned, I think, while the signal was being made, whether actually the last or not I don't remember, but I am quite positive that one or more signals were sent to the "New York" after we made the turn and were leaving her.

217. Q. Was this signal given as you were turning the one put down in the log of the "Indiana" as given at 5.55—"Can not see"—in reply to the inquiry "What colors does strange vessel carry?"

A. I don't know. It may have been, as the turn was made very suddenly, and it is possible that we began to turn immediately after having hoisted that signal.

218. Q. All signals made were put down in the log, were they not—would have been put down?

63 A. All official signatures are supposed to be entered in the log, and should be so entered, but I have known it to occur sometimes that hasty wig-wag signals have been omitted.

219. Q. What speed was the "Indiana" making when you turned and headed for the "Panama?"

A. We put on all speed, and made probably ten and one-half knots.

220. Q. The "Indiana" was contracted for, was she not, as a fifteen-knot ship?

A. I think the contract required 15.65 knots maximum speed. She made that speed on her official trial.

221. Q. Was her bottom foul at this time?

A. It was, to a certain extent.

222. Q. Do you think ten and one-half knots would be the maximum of what she was probably making on full speed then?

A. At that time her boilers were not in perfect condition, and, as I have said, the bottom was somewhat foul. Moreover we did not use force draft, which was used at her official trial, and was called for by the specifications in making the maximum speed of which she was capable.

223. Q. Then ten and one-half knots would be your estimate of her speed then?

A. Approximately, yes. I should say not more than eleven.

64 224. Q. You say that it was safe that she was making ten and one-half?

A. I should say that it was very nearly ten and one-half, about ten and one-half.

225. Q. What time was it that the "Panama" was captured? Was that about 6.10?

A. Between 6 and 6.10, I think; a few minutes after 6.

226. Q. Well, now, supposing that this turn was made at 5.55, the time that this signal I have inquired about was put down in the log, and the capture was made at 6.10, you would have run fifteen minutes, would you not, towards the "Panama" before her capture?

A. If those figures are correct.

227. Q. I put the supposable case. If those figures are correct. Now, how far would that be at ten and a half knots an hour?

A. About $2\frac{6}{10}$ knots.

228. Q. Now, if you were within six or seven miles of the "Panama" when you turned, and you ran towards her $2\frac{6}{10}$ knots, would you not have been at the time of the capture a great deal closer than five or six miles?

65 A. Assuming that we were six or seven miles from the "Panama" at the time of the turn and ran towards her for fifteen minutes at ten and one-half knots, we would have been probably between three and a half and four and a half miles from her.

229. Q. That you would have called within easy signal distance?

A. From three and one-half to four and one-half miles would be quite easy signal distance.

230. Q. Now, you have stated, did you not, that you estimated you were within six or seven miles of her when you sighted her, probably just before this conversation with the pilot, and that afterwards, up to the turn, the distance between you did not increase, and that when you did turn, that you then headed straight towards her, in her general direction?

A. I stated, if I remember rightly, that she appeared to be within six or seven miles when sighted. I had no means of making an estimate, except making a guess. As for her distance being a less distance after that I can't be positive, and do not think that I did reply positively.

231. Q. Now, do you consider at the time that you turned to go directly towards the "Panama" that the "Mangrove" was then in signal distance?

A. I do.

66 232. Q. At the time the chase commenced was she in signal distance?

A. She was within signal distance all the time.

233. Q. After the capture you kept straight on, did you not, until you fired the gun across the bow of the "Panama?"

A. My recollection is that we continued on our course until then.

234. Q. Your purpose was to overtake her, was it not—to capture her?

A. To intercept her, yes; and assist in the capture.

235. Q. You say that after that capture was made that it was your purpose to assist in the capture?

A. Yes, sir.

236. Q. After the capture was made? I asked you did you keep straight on after the capture was made?

A. I understood you to say that after the gun was fired. After the

capture was made by the "Mangrove" we continued, as I remember, in a general direction toward the two vessels.

237. Q. How close was the "Panama" to your vessel when you fired the gun across her bow?

A. I don't remember.

238. Q. Can't you give some estimate of how close?

A. I don't think I can.

67 239. Q. Were you a mile?

A. Yes, we were a mile, I should think.

240. Q. A mile from her?

A. I should say we were at least a mile, possibly more.

241. Q. Now when the two vessels, the "Mangrove" and the "Panama," stopped, how long would you say that stop was?

A. Why, a few minutes.

242. Q. Would you say five minutes?

A. I think so.

243. Q. Now, during that five minutes your ship was going right along all the time?

A. Yes, we were approaching.

244. Q. Now, according to the log of the "Indiana," when you signaled to the "Mangrove," with the prize, to come within hail it was 6.45. Estimating the time at 5.55, as shown here, when this signal referred to was given, and estimating a run of fifteen minutes, or $2\frac{6}{10}$ knots, up to the time of the capture, that is run till 6.10; then from 6.10 to 6.45, when you hailed this ship, would have been thirty-five minutes. How far, at ten and one-half knots an hour, running towards the "Mangrove" and "Panama" for thirty-five minutes, how many knots would that make?

68 A. That would make a little over six knots—six miles at those figures.

245. Q. Then, running from the time when you turned, to the time of the capture, two and six-tenths knots, and running a little over six knots up to the time that you hailed the "Mangrove" would make eight and six-tenths, a little over eight and six-tenths knots, would it not?

A. That would be the distance.

246. Q. Then, if the "Panama" was a mile away, as you stated, at the time of this hail, that would make in the neighborhood of nine knots to where the "Panama" was then. Would it not? From where you had run?

A. Yes, with that basis of computation.

247. Q. Now what was the speed of the "Mangrove?"

A. I think her maximum speed was about eight knots.

248. Q. After the capture, would you say that she came on with the prize at full speed?

A. No; she appeared to be going more slowly than full speed.

249. Q. What would be your estimate?

A. I could do no more than guess, because we were going in the opposite direction, and I have no means of calculating her speed.

250. Q. What would your guess be?

69 A. I suppose after they started and got under way they made perhaps five or six knots.

251. Q. Well, say that she made five knots an hour; that she stopped five minutes when the capture was made at 6.10, namely to 6.15, and that she was hailed at 6.45, she would then have run a half hour. Was she running at five knots an hour, taking this as an estimate?

A. Yes, sir.

252. Q. This would have been two and a half knots, would it not?

A. It would.

253. Q. If you add, going by this estimate, $2\frac{1}{2}$ knots to the $2\frac{6}{10}$ knots run by the "Indiana" up to the time of the capture, and the six and a little over knots run after the capture up to the hailing of the vessel, and the mile estimated that you were from the "Panama" when you did hail her, how many knots would that make?

A. The sum of these distances is about $12\frac{2}{10}$ knots.

254. Q. Now, if those figures be approximately correct, is it anywise possible that at the time that you turned there, some twelve knots away, that you could have been within signal distance by flags with the "Mangrove?"

A. We were not that distance from the "Mangrove" at the time we turned. The "Mangrove" was proceeding toward the prize as well as we.

70 255. Q. Answer the question. You can make any explanations you wish.

A. If we were within $12\frac{2}{10}$ knots distant from the grove at that time we were not within signal distance by flags.

256. Q. At the time of the capture you have stated that the "Mangrove" was probably, as I understood you, a little beyond eastward, beyond both of you, astern of the "Panama." Was not that the situation at that time?

A. That is my recollection, which is not particularly clear on that point.

257. Q. You were approximately equally distant to the "Panama" and the "Mangrove" at the time of the capture, were you not?

A. I don't know that we were.

258. Q. Would you say that you were nearer to the "Mangrove" or to the "Panama?" Were they not right together when they sent a boat from the "Mangrove?"

A. The boat was sent on board the prize when we were, I should say, approximately the same distance from the two vessels.

259. Q. Now, then, according to this estimate which you just made, you ran from the time of the turning up to the time that the boat
71 was sent across, the time of the capture, $2\frac{6}{10}$ knots. If you deduct that from the $12\frac{2}{10}$ knots, and that remainder, say $9\frac{6}{10}$ knots, represents, approximately, your distance from the "Mangrove" at the time of the capture, would you still say positively that you were in signal distance—that you could have read signals?

A. If we were $9\frac{6}{10}$ knots distant I should say that I could not have read signals.

260. Q. When you speak of having read signals with a strong glass and with the wind blowing the flags at broad angles with the line of sight at from five to six miles, and, further on, of that being the maximum at which you could probably read a flag signal, did you have reference to the most favorable circumstances under which to read signals?

A. I referred to circumstances that were ordinarily favorable; not unfavorable, in other words.

261. Q. Did you refer to the most favorable circumstances?

A. I don't think that I attempted to state any limit for reading signals under the most favorable circumstances. That would be very difficult to do.

262. Q. Well, now, what was the general condition of the weather on that day of the capture?

A. As I remember, it was a clear, fair afternoon, with a light breeze blowing from the westward.

72 263. Q. Which way were you going?

A. We were steaming northward and to the eastward.

264. Q. This capture took place about 6.10. How high was the sun at that time, would you say?

A. I would say at the end of April. Why, I don't remember the actual condition of the sun at the time from any observation. I can only estimate by the latitude and the time of year that it was perhaps an hour high, may be a little more or a little less.

265. Q. It was probably an hour high on the 25th of April at 6.10?

A. Perhaps three-quarters of an hour. I don't recall the exact latitude and the time of sunset.

266. Q. Did not the sun set there in the neighborhood of Havana at that time at 6.25?

A. I don't remember, but I should think not. I should think it was later.

267. Q. Well, I suppose that the figures from the Hydrographic Office on that subject would be approved, would they not?

A. They would.

268. Q. Suppose that the sun was only fifteen minutes high at
73 the time of this capture. Would you call that a favorable or unfavorable circumstance for reading signals?

A. I should say that that would depend upon the position of the sun also with reference to the line of sight between the signal stations.

269. Q. Well, what was the position of the sun with reference to the line of sight between the signal stations at that time?

A. The sun was well toward the westward of the line of sight.

270. Q. Was that a favorable condition or otherwise?

A. I don't consider that it was either particularly favorable or unfavorable. There was ample light, and its position would not be such as to interfere with the clear vision between the stations.

271. Q. If the sun's position was not such as to interfere with the line of vision between the two stations, would you consider the conditions more favorable, or equally favorable, where the sun was only fifteen minutes high and where it was an hour high?

A. I don't think there would be any appreciable difference.

272. Q. Between fifteen minutes above the horizon and an hour above?

A. Not particularly. Not under the conditions named.

74 273. Q. Don't you consider it harder to distinguish colors at a distance fifteen minutes before the sun sets than an hour before the sun sets?

A. Well, I think that it might be harder to distinguish the colors, although in that time and in that latitude the light was full and ample, as I remember, almost up to the time of actual sunset.

274. Q. Well, now, if it would be harder to distinguish colors at fifteen minutes before the sun set at a distance than at an hour before the sun set, would you say that fifteen minutes before the sun set was the most favorable condition under which to read signals?

A. No, sir.

275. Q. Does not the reading of the signals depend primarily upon being able to distinguish colors?

A. It does, colors and shapes.

276. Q. But if you could get the shape and could not get the color, would not that be an essential which would keep you from understanding the signal?

A. It would.

277. Q. Does not the shape that you get depend largely upon the weather conditions as to whether you can see thoroughly the shape of the flag?

75 A. No, sir. The pennant is always distinguishable from a flag, no matter what the direction of the wind. By pennant I mean the triangular-shaped signal flag.

278. Q. Well, the shapes with the colors that you can see—that would be visible to you—would depend largely upon the way that the wind was blowing the flag?

A. Yes, sir; flag or pennant either.

279. Q. Now, with all those conditions which are essential to reading understandingly a flag signal at a distance, can you say beyond all possibility of doubt that you could have read a flag signal from the "Mangrove" at the time of the capture?

A. I am positive that from my recollection of all of the circumstances named in the question, from the appearance of the "Mangrove" herself on the water, the appearance of the intervening space of water between us, and the general conditions at that time existing, that I could have read without difficulty any flag signal hoisted by the "Mangrove."

280. Q. Was not the "Mangrove" at that time fitted out with a cable-cutting device, and had not the "Indiana," the "Detroit," and "Wompatuck" been detailed to go with the "Mangrove" and to protect her in the work of cutting cables on the south of Cuba?

A. It was generally believed on board that such an expedition
76 had been planned in which we were to take the part referred to. I have no official knowledge of this detail, nor had I then.

281. Q. I don't mean that you had seen the orders, but was not that the understanding?

A. That was the understanding. I would like to say that the names of the other ships forming part of the expedition I do not recall. The "Indiana" and "Mangrove" I do remember.

282. Q. Were not these ships called to go to Key West to coal in order to carry out this proposed order, except the "Indiana," which on account of her draft was to go to Dry Tortugas?

A. I think that was the case, but am not positive.

283. Q. Were not Chaplain Cassard and Chief Yeoman Murry on the

"Mangrove" as passengers—the chaplain because he was a caterer of the mess to make arrangements about that, and the other man to make arrangements about provisions, etc.? Was not that the reason that they were on the "Mangrove" as passengers?

A. That is my recollection of the reason.

284. Q. Now, was it not the understanding that the "Indiana" was not to leave her blockade station until after dark, so that it would not be known in Havana that she had gone off the station?

77 A. I have no knowledge of the fact. The captain alone could say.

285. Q. Was not the "Panama" expected in Havana about that time?

A. It was believed that the "Panama" was then on the sea making passage from New York to Havana.

286. Q. Did not the ships on the blockade there have cognizance of that fact—that the "Panama" was expected in about that time—and were rather on the lookout for her?

A. I do not know in regard to the other ships, as I had not had any communication with any of them for some time.

287. Q. Your ship was expecting her?

A. We were on a sort of general lookout for her, as it was expected that she would be in soon.

288. Q. Was the "Mangrove" in sight, in signal distance, when you first sighted the "Panama"?

A. I think she was.

289. Q. Did she remain in signal distance from that time on to the time of the capture?

A. She did.

290. Q. Was she in signal distance then at, say, when the "New York" signaled to the "Indiana" at 5.45, "What is character of strange vessel?"

A. She probably was.

291. Q. She must have been if she stayed in signal distance all the time after you sighted the "Panama."

78 A. My last answer I did not mean to be absolutely unqualified. I should say that I think she was, in answer to both questions.

292. Q. Well, then, your reply to this, as put down in the log, was "a merchant vessel," was it not?

A. That is my recollection—a "steam vessel," "a merchant vessel," or something like that.

293. Q. Then, according to the log, the flagship signaled back to you at 5.52, "What colors does strange vessel carry?" and at 5.55 you signaled back "Can not see." Now if the "Mangrove" was at that time in signal distance of you, why is it that the "Indiana" did not inquire of the "Mangrove" what vessel that was?

A. Because it was not our place to signal to another vessel when called upon by the flagship in reply to a question. We had to make immediate answer, and would not have been justified in opening up communication with any other ship.

294. Q. After you had made immediate answer, would you not have been justified in getting this information from any vessel that was nearer than you were to the prize and then signaling the flagship that you had gotten it, if the flagship was not in signal distance of this other vessel?

A. W might have been justified. I do not know.

79 (This question is objected to by counsel for the "Indiana" on the ground that it involves the witness' opinion as to the construction of the Naval Regulations.)

295. Q. Don't officers have to take responsibilities of this kind at times in order to get information that is important?

A. I can't answer for the commanding officer of the ship. He alone would have had authority to make such signals to the "Mangrove." I would not have done so on my own responsibility.

296. Q. Your signals, of course, were all made under the order—that is, by report to the commanding officer—were they not?

A. Either to the commanding officer or the officer of the deck, who reported to him.

297. Q. All signals were reported to the commanding officer?

A. Yes, sir.

298. Q. You could not make out the Spanish flag on the "Panama" at that time?

A. At the time the "Panama" was headed to the westward nearly in our direction, and the breeze was blowing from the westward, so

80 that her colors were probably flying almost directly away from our line of sight, and we could not make her out.

299. Q. Now, would not flags from the "Mangrove" have been flying in the same direction?

A. No, because the "Mangrove" was considerably more to the northward of us—that is, much nearer to the north than the "Panama," the "Panama" being more to the eastward.

300. Q. The wind was blowing the same on both ships, was it not?

A. The wind was blowing the same.

301. Q. Now, you stated in your former evidence, "the 'Mangrove' came up with her," referring to the prize, "and apparently communicated with her by means of a boat. We proceeded towards the ships and soon made out the stranger's colors to be Spanish." Now, then, were the colors of the prize made out by you after the capture took place?

A. I can't recall at this time the succession of these events, but from the quotation you made from my deposition I should say that it was shortly after the communication between the two ships by means of the boat.

302. Q. Then, if it was shortly after, it was not until after the capture that you made out the flag on the prize.

A. If by capture you mean the communication by the boat——

81 303. Q. Taking possession of the prize?

A. That would appear to be the meaning of my deposition.

304. Q. Well, then, at the time of the capture you could not make out the flag that was actually flying upon the Spanish vessel, the prize, and yet you are positive that you could have made out signals with flags—that you could have made out, so as to read, the signals made with flags at that time on the "Mangrove?"

A. I am, for the reason that for one thing the flag signal would have been far clearer, more visible, more legible every way than the colors of a Spanish merchant vessel; and for another reason, the "Panama" was approaching us bows on and her colors were partially obstructed, at least

at intervals, by her masts or other objects on her deck, and we had not the same opportunity to get a clear view of them that we would have gained of signals from the "Mangrove."

305. Q. Now, do you say that beyond all doubt none of these obstacles which prevented you from seeing the Spanish flags which you were looking at would have prevented you from seeing the signals from the "Mangrove" which were not put up? Would you be certain of this?

A. I am certain that the obstacles to the reading of signal
82 hoists aboard the "Mangrove" would necessarily have not been anything like those I have mentioned. She had a clearer deck.

306. Q. Now, the "New York" did not join in the chase, did she?

A. She did not.

307. Q. When you turned on your course toward the "New York" and headed in the direction of the "Panama" were you going away from the "New York?"

A. Yes, sir; that is, the "New York" was practically stationary. We were leaving her.

The taking of said deposition not being finished at ten o'clock p. m. on the 23d day of July, 1901, the further taking of the same is adjourned until August 19, 1901, at eleven o'clock a. m.

MARTHA M. BECK,
Notary Public.

83 Pursuant to adjournment, the taking of the deposition of William C. Dawson was resumed on the 19th day of August, 1901, at eleven o'clock a. m., his statements as hereinafter set forth being taken down in shorthand and afterwards transcribed in typewriting by Clara M. Loyd, a disinterested amanuensis selected by the parties.

Redirect examination by WILLIAM B. KING, Esq.:

308. Q. In question 259 you were asked, if you were at a distance of $9\frac{6}{10}$ knots from the "Mangrove" at the time of the capture, whether you could then have read signals, and answered that if you were $9\frac{6}{10}$ knots distant you should say that you could not have read signals. Will you please state whether at the time of the capture, between 6.5 and 6.10 p. m., you were $9\frac{6}{10}$ knots distant?

A. We were not.

309. Q. You have given various details in the answers to the questions from 231 to 259, based upon average times of running and the distance from the "Indiana" to the "Mangrove" when the shot was fired across the bow of the "Panama," by which a distance of $12\frac{2}{10}$ knots between the "Panama" and the "Indiana" at the time when you were signaling to the "New York" is reached. Will you please state whether that is a correct estimate of the distance between these vessels at that time?

A. I am quite certain that it is not.

84 310. Q. Please state why you believe that the two distances referred to in the last preceding questions are not the correct distances.

A. In the first place, the statements of the various distances made by me in answer to the questions were mere approximations, in some cases not more than guesses, as my recollection at this time as to the exact movements of the three vessels at the times mentioned is indistinct, and

therefore the relative distances and intervals of time testified to by me were not intended to be precise or accurate in every particular. It is easily possible, therefore, that my estimates in these matters were inaccurate in more than one instance, so much so that the final determination of the relative positions of the ships deduced from the several estimates could not be relied on with certainty. In the next place, I am positive that the distances of $9\frac{6}{10}$ and $12\frac{3}{10}$ knots, respectively, were not the true ones, for the reason that at those distances I could not have seen with distinctness some of the occurrences to which I have testified, as, for instance, the communication by boat between the "Mangrove" and the "Panama." Moreover, we could not have been $12\frac{3}{10}$ knots distant from the "Panama" at the time we made the turn away from the "New York" and were signaling to the latter vessel, for it was evident that the "Panama" was clearly visible to the "New York," as she was making inquiries about her and we were replying with a degree of certainty that could not have been justified at such a distance. Furthermore,
85 while, as I have said, the precise movements and directions of these vessels have largely escaped my memory, I can say with positiveness and clear recollection that at the time we made this turn the "Panama" was not such a distance as twelve knots from us, and I am perfectly certain from my recollection of her appearance and that of the "Mangrove" in the water that the "Indiana" was not at any such distance as $9\frac{1}{2}$ knots from either the "Panama" or the "Mangrove" when the capture was made. I remember with perfect distinctness that at the time of these events I was positive and convinced, and so stated to others, that we were very much nearer than the distances I have mentioned. My judgment then was based upon the practice I had had in estimating distances of vessels with which I was familiar as the "Mangrove."

311. Q. In answer to question 241 you said that when the "Panama" and the "Mangrove" stopped the stop was a few minutes long, and in answer to question 242, "Would you say five minutes?" you answered, "I think so." Now, will you please state whether you can make any approximation of the time of that stop and give the details, if you can, upon which you make that approximation?

A. I would say in explanation of the answer you have quoted that it was intended as a statement of the least time that the two vessels were stopped, as I understood the question to call for such a statement. As a matter of fact, both from my recollection of the event and from my
86 general knowledge of the procedure required in such cases, I am very sure that the time was considerably greater than the minimum period I have named. I believe that the actual time during which the "Mangrove" and the "Panama" were hove to was fully fifteen or twenty minutes. It may have been even longer. When a merchant vessel is boarded by a man-of-war under such circumstances as the foregoing it is necessary first for both vessels to stop, then for a boat to be lowered and pass from the man-of-war to the merchantman, and then, when the boarding officer reaches the latter, for him to go on board and interview the master. He must question him in regard to the nationality, character, ports of departure and destination of his ship, the nature of the cargo and composition of the crew, etc., and, above all, he is required to examine the ship's papers in order that he may make a full

and intelligent report in the whole matter to the commanding officer of the man-of-war. Therefore I believe that it would have been physically impossible to carry out these requirements in less than five minutes under any circumstances, and that a much greater length of time would ordinarily be necessary, and was actually employed in this case.

312. Q. In answer to question 219 you said that the "Indiana" put on all speed and made probably 10½ knots. Please state whether
87 that speed continued until you came up to the "Panama" and the "Mangrove."

A. I have no distinct recollection on this point, but believe that it did not, for the reason that, after we had proceeded at this speed for a certain time, it appeared to be plain that the "Mangrove" and "Panama" were coming directly towards us, and that we should soon meet them; therefore the maximum speed was no longer necessary. As I say, however, I do not exactly remember this to have been a fact.

313. Q. Can you state positively whether, between the time when you turned to go toward the "Panama" and the "Mangrove" and the time when the "Panama" and the "Mangrove" stopped, they were proceeding toward the "Indiana?"

A. I can not. I do not remember with certainty their movements during this period. My answers to these matters are not meant as unqualified statements of fact, as at this time I do not recall all the individual movements of the vessels concerned.

314. Q. In answer to question 113, about the use of the whistle, you said that the letters are formed by producing short and long blasts in certain combinations. Will you please state whether that answer was correct?

A. It is not exactly correct. I find upon further thinking of
88 the matter that my memory was somewhat at fault as to the precise details of this mode of signaling. Instead of the letters being made by combinations of short and long blasts they are in fact made by combinations of short blasts or toots; that is, one toot representing the numeral 1, and two toots in quick succession standing for the numeral 2, these numerals corresponding to right and left motions of the flag in wigwag. The long blast that I mentioned is used as an interval between words.

315. Q. In your answer to question 130 you say that in a gun signal one gun is the equivalent of a short toot on the whistle, and two guns in comparatively rapid succession correspond to a long blast of the whistle. Please state if this is correct.

A. No; this is subject to the same explanation that I have just made. Two guns represent two toots of the whistle instead of a long blast. Furthermore, I wish to state that my description of the use of gun signals was at fault in this particular: The discharges of the gun do not correspond to the toots of the steam whistle when the latter are used in making signals by the wigwag code, but correspond to the fog signals when the latter are used as numeral signals. That is to say, whistle signals may be made, using either the wigwag code or the general signal or numeral code, whereas the signal book limits the use of gun fire
89 to making general signals; that is, by numbers and not by words spelled out. The only exception to this is in the case of certain

conventional designations, such as "affirmative," "negative," etc., which are made according to the wigwag code. Therefore gun signals would not be used to spell out words but to make numbers, as do the flag hoist signals, each number referring to a certain word or combination of words in the general signal book.

316. Q. What is this general signal book to which you refer?

A. It is the book issued by the Navy Department to all ships in commission, containing a large number of previously constructed messages, each being indicated by its own number, so that when that number is made by visual or sound signals, on referring to the same number in the general signal book the message is understood, and vice versa as regards sending this message.

(Mr. Micou objects to this question, on the ground that there is better evidence of what the signal book says, namely, the book itself.)

317. Q. Can you state whether this book is of a confidential character?

A. It is.

90 318. Q. To whom is it furnished?

A. To the commanding officer of each vessel, as I remember.

319. Q. When was your last duty as signal officer?

A. About September or October of 1898.

Recross-examination by BENJAMIN MICOU, Esq.

320. Q. When you speak of a number of miles at which signals can be made and read and so on, do you have reference to knots or miles?

A. Well, I gave an approximate distance as a general estimate on my part in miles, that is, sea miles.

321. Q. What is the exact distance of a knot?

A. A knot is very nearly 1¼ statute miles.

322. Q. When you answered to question 241, as to how long the two vessels, the "Mangrove" and "Panama," stopped, that it was a few minutes, and then when I asked if you would say five minutes, that you thought so, did you not know then the usual things that had to be done when one vessel communicated with another in making a capture?

A. I did, but understood the question to be meant in the sense of as much as five minutes, and was uncertain as to whether another question would follow asking me to give a more accurate estimate.

91 323. Q. Now, when you treble that time, or do you make it four times as great, saying that it was probably fifteen or twenty minutes, and give as your reasons the communications which customarily have to take place, is that estimate of fifteen or twenty minutes based upon the length of time that these communications take, or is it based upon your recollection of how long the vessel stopped?

A. My recollection of the actual length of time that they stopped is, as I have said, very indistinct. I could only guess as to the impression that was made upon me at that time.

324. Q. You don't know of your own knowledge, do you, what actually did take place when those vessels stopped, as to what was done aboard those vessels?

A. I do not.

325. Q. How long after the vessel stopped was it that you saw the boat in the water?

A. I can not say.

326. Q. And you can't say whether the boat was going to the "Panama" or coming back?

A. It appeared to be going towards the "Panama," but at that distance its motion would be apparently very slight, and I may possibly have been mistaken.

92 327. Q. You didn't see the boat but once, did you?

A. I do not remember seeing it but once.

328. Q. You saw these vessels stop apparently before you saw the boat, didn't you?

A. I saw that they had apparently stopped before I saw the boat.

329. Q. Naturally, upon seeing vessels stop that way, you would expect communication between them, would you not, of some kind?

A. Yes, sir.

330. Q. Well, then, were you not watching pretty closely in scanning these vessels to see whether anything did pass between them or not?

A. I was watching the whole occurrence, and naturally would have included that as part of it. I was also watching, however, as signal officer, for the appearance of signals, and observing the Spanish vessel with a view to more closely identifying her.

331. Q. Had the vessels stopped at the time you saw the puff of smoke from the guns?

A. No; I think not.

332. Q. How long after you saw this puff of smoke did you hear the sound of the guns?

A. I do not remember.

93 333. Q. Well, give me your best recollection of that point.

A. I can not do more than guess, as I have absolutely no recollection at this moment of the interval.

334. Q. You know you did hear the report after you saw the flash, don't you?

A. I do not at this time remember hearing the report; that is, I haven't a distinct impression on my mind of that sound. It is very probable that I did hear it.

335. Q. Didn't you state, Captain, in the direct examination that you heard the report, and that it was loud enough to have attracted the attention of other people on the ship who might have been watching and have seen the puff of smoke as you saw it?

A. I believe that I did.

336. Q. And now you say that you haven't a distinct recollection of the report?

A. I haven't such a recollection of it, nor had I when I testified in the direct examination, that I could give any correct estimate of the length of time after the sight of the smoke from the guns.

337. Q. Well, if you have a distinct recollection that you did see a puff of smoke and that you heard a report, mustn't you have

94 some recollection of the relations between those two events, as to how long one was from the other?

A. I can say that it did not immediately follow the smoke; there was certainly an interval of some seconds. The only way that I could truthfully estimate the interval would be from an estimate that I would make of my distance from that gun when fired, and thus calculate the time for the sound to carry.

338. Q. Can't you make any estimate at all from your recollection of these events?

(Mr. King objects to this question, as it has already been twice asked and answered.)

339. Q. Captain, you state that you can't tell distinctly the directions that these different vessels were sailing, the "Mangrove" and the "Panama," with relation to your own vessel, and can't state distinctly about hearing the report of the gun, or whether the boat was going or coming, or how long this stop was. If your recollection is so indifferent as to these points, how is it that you can recollect with such positive accuracy that you must have been close enough to read signals?

A. Because I have a sufficiently clear recollection of the appearance of the "Mangrove," that is, her relative size and appearance at the time of the capture, to be sure from my experience with her and with
95 vessels that were about her size that she was within a distance at which I could have read signals. Furthermore, I remember with equal distinctness that I had this certainty at that time, and that, as I have said before, I so expressed myself, and that there was no difference of opinion on that point among the officers on deck in conversation about the matter at that time.

340. Q. Well, then, is it from what those other officers on board the ship thought that gives you this opinion, or what you yourself witnessed, or is it partly both?

A. As I have said, it is primarily from my own recollection of the appearance of the ship at that time, which is corroborated in my mind by the other circumstances I have mentioned.

341. Q. Now, based upon your recollection, how long did those two vessels stop?

A. I can not give a definite answer from my recollection of the time they stopped. Of one thing I am certain: I did not make a note by watch or clock of this interval at the time.

342. Q. Suppose those vessels stopped for twenty minutes, the extreme of the time that you stated would be necessary to examine the ship's papers and do what was customarily done, and the "Indiana"
96 was going at 10½ knots an hour, how far would she have traveled in that twenty minutes?

A. Three and one-half knots.

343. Q. Well, now, if five or six knots is the maximum at which you could certainly read a signal, if you diminished that distance by 3½ knots wouldn't it bring you within very easy signal distance, where you could read?

A. It would. Yes, sir.

344. Q. Well, if you were only five or six knots from those two vessels at the time that they stopped and you went on towards them for 3½ knots, ought not the flag that was flying from the Spanish vessel to have been pretty plainly visible all that time?

A. Yes, sir.

345. Q. Now, when did you first know, as a fact, that the "Panama" was captured?

A. My recollection is that, on seeing her hove to and communication made with the "Mangrove" and the vessels start together, we concluded that the capture had been made.

346. Q. Well, then, you had concluded that the capture had been made when you saw those vessels meet and apparently communicate with each other?

A. Not, I should say, until their starting again together indicated that such was the fact.

347. Q. Well, why, then, did you fire across the bow of the
97 "Panama" later on?

A. Because we saw the Spanish colors flying.

348. Q. Was this shot fired as soon as you recognized the Spanish colors?

A. I don't remember exactly, but suppose it was.

349. Q. Now, when you speak of those estimates that you made in your cross-examination of the distance traveled from the time of turning and from the time of capture as being incorrect, you don't mean that there is a mistake in your figures, or that those estimates are incorrect if the figures as taken were correct, do you?

A. I do not mean that the computations of distance, based upon the estimates, are made incorrectly; I do mean that there is a possibility of considerable error in the estimates themselves.

350. Q. How far out from Havana was this capture made?

A. I think it was some twenty or twenty-five miles.

351. Q. Now, as I understood you in your direct examination, in describing the stations of the vessels, you said the "Indiana" was stationed at some five or six miles from the shore and that its station covered a patrol along the coast that was fixed by bearings from Morro Castle and was covered by some ten miles.

98 A. I gave those figures as approximately accurate, but I am by no means sure of those distances. The method of fixing the limits, however, of the stations was by bearings as stated.

352. Q. Are you sure of the distance out from the shore that you were to keep?

A. I am not, as I was not charged at any time with the duty of preserving that distance.

353. Q. Do you know of any orders to the "Indiana" not to go off her station on the afternoon of that capture until after dark?

A. I have no recollection at all.

W. C. DAWSON,
Captain, U. S. Marine Corps.

Subscribed and sworn to before me this 19th day of September, 1901.
[SEAL.] MARTHA M. BECK,
Notary Public.

99 (Indorsed:) Nos. 380 and 445. In the Supreme Court of the United States. The United States, appellant, v. The Officers and Crew of the U. S. S. "Mangrove." The Officers and Enlisted Men of the U. S. ships "New York," "Indiana," and "Wilmington," appellants, v. The Officers and Crew of the U. S. S. "Mangrove." Deposition of William C. Dawson for Captain Henry C. Taylor, commanding the U. S. S. "Indiana," and other officers and men of said vessel.

100 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
vs.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND CREW OF THE U. S. S. "New York," "Indiana," and "Wilmington," appellants,
vs.
THE OFFICERS AND CREW OF THE U. S. S. "New York." } No. 17930.

101 STATE OF RHODE ISLAND, *County of Newport, ss:*

On the 21st and 24th days of August, A. D. 1901, personally appeared before me upon call of the officers and crew of the U. S. S. "Indiana," William G. Cassard, and on the 24th day of August, A. D. 1901, personally appeared before me upon call of the officers and crew of the U. S. S. "Indiana," Henry C. Taylor, who were each by me severally sworn to tell the truth, the whole truth, and nothing but the truth, and their testimony was thereupon taken down by me in shorthand and transcribed by me from my shorthand notes and thereafter read over by said witnesses, and sworn to and subscribed by each of said witnesses as a true and correct statement of their testimony and transcript thereof.

The officers and crew of the U. S. S. "Indiana" appeared by William B. King, esq., and the officers and crew of the U. S. S. "Mangrove" by Benjamin Micue, esq.

In testimony whereof witness my hand and notarial seal.

[SEAL.]

MAX LEVY,
Notary Public.

102 WILLIAM G. CASSARD, U. S. N., a witness called on behalf of the officers and crew of the U. S. S. "Indiana," having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. KING:

Q. Please state your name, residence, and occupation.

A. William G. Cassard; Newport, Rhode Island; chaplain, United States Navy.

Q. How long have you been in the Navy?

A. Four years and three months.

Q. Where were you stationed on the twenty-fifth of April, 1898?

A. On board the U. S. S. "Indiana," off Havana.

Q. How long had you been on that vessel?

A. About twelve months.

Q. Were you on board the "Indiana" at the time of the capture of the Spanish steamer "Panama?"

A. I was not.

Q. Please state where you were.

A. I was on board the U. S. S. "Mangrove." Had joined that ship for the purpose of going to Key West to lay in stores for the "wardroom mess," of which I was caterer.

Q. Did you see the "Panama;" and if so, how long after you left the "Indiana?"

A. I saw her, I should say, twenty minutes after we left the "Indiana."

103 Q. Which way was the "Panama" heading?

A. In the direction of Havana—in the general direction of Havana.

Q. Please state what was done by the two vessels about that time.

A. Well, the "Mangrove" started to intercept the "Panama," and fired one or two shots across her bows, but the "Panama" didn't stop till at least the third shot; perhaps more than that. Certainly there had been as many as three shots fired before she showed any signs of stopping.

Q. Can you give an estimate of the time that elapsed between your first sighting the "Panama" and the "Panama" stopping?

A. Well, it was a very short length of time, as we were going towards each other. The "Panama" was going in the direction of Havana and we were going in the direction of Key West, and I suppose it was in the neighborhood of twenty minutes.

Q. What was done when the "Panama" stopped?

A. When we got very close to her, as close as easy hailing distance; so close that Capt. Everett could hail the "Panama," and he said, "If you don't stop"—her engines had not stopped, for her propellers were churning the water—Capt. Everett said, "If you do not stop we will fire into you; you are our prize." Then we lowered a boat, which was manned by a crew, and Ensign Dayton taking charge of the boat and crew, pulled over to the "Panama" and went aboard of her. The crew, however, didn't go aboard; only the officer went aboard.

Q. What occurred then?

104 A. Then we headed for the "Indiana," which was coming up. Captain Everett reported to Capt. Taylor and Capt. Taylor sent a prize crew in charge of Cadet Falconer to take the ship into Key West.

Q. When the boat from the "Mangrove" went over to the "Panama" what did the boat do?

A. The boat just laid off between the ships for a moment while Mr. Dayton was aboard and then returned to the "Mangrove."

Q. Can you give any estimate of the time when the "Mangrove" and the "Panama" were lying without motion together, from the moment that the boat stopped headway till they began to move again toward the Indiana?

A. I suppose it was twenty minutes or thereabouts. I make that as an estimate rather than an absolute statement.

Q. Can you make any estimate of the time the "Mangrove" was moving from the moment when she started to move till she reached within hailing distance of the Indiana?

A. Oh, it was a very short time, indeed, from the time we had gotten underway.

Q. Can you give any estimate of that?

A. Well, I could only estimate it by the fact that when the capture was made I estimated that the "Indiana" was somewhere in the neighborhood of three or four miles distance from us, and she was coming in our direction during the interval while we were lowering the boat and while Mr. Dayton was going aboard and while the boat was coming back, and I should say that it was not more than fifteen or twenty minutes
105 at the outside from the time that we started in the direction of the "Indiana" and Capt. Everett hailed her and reported what he had done.

Q. How long did it take the "Mangrove" to get under full headway?

A. Oh, two or three minutes, I suppose; a very short time.

Q. Have you ever made any observation as to the speed—the rate of speed—at which a vessel on which you are is traveling?

A. Yes; I have always been a very close observer of the rate of speed. During the cruises of the ships I have had practically little to do when on deck, and have filled in my time, to some extent, in observing that and other characteristics of ship life.

Q. What estimate would you make of the speed at which the "Mangrove" was moving when she approached the "Indiana?"

A. About six knots.

Q. How far was the "Mangrove" from the "Indiana" when the "Indiana" fired across the bow of the "Panama?"

A. I am not clear as to that.

Q. Where were you standing on the "Mangrove" during the chase of the "Panama?"

A. On the superstructure deck, near the pilot house.

Q. Can you give us some idea of the construction of the "Mangrove," so we can understand how this deck was located?

A. The superstructure deck is the upper deck; on that is located the pilot house; the bridge is just aft of the pilot house, and I should say about on a level or perhaps elevated a little above the top of the pilot house. This is my recollection; I have not seen the "Mangrove" since the war; this is simply a recollection.

106 Q. The "Mangrove" was a light-house tender, was she not?

A. Yes, sir.

Q. Something unusual—something out of the ordinary construction?

A. Yes, sir.

Q. Did you at any time during the chace, before the "Panama" stopped, see the "Indiana?"

A. I did.

Q. Please state when you saw her.

A. From the time that I discovered that a chase was on, or at the beginning of the chase, I naturally looked for the "Indiana" and saw her, and held conversations regarding her and her approach with Chief Yeoman Murray, of the "Indiana," who was standing with me on the superstructure deck.

Q. During this chase were you going toward the "Indiana" or receding from her?

A. You speak of it as "a chase." In the strict sense of the word it was not a "chase," because the "Panama," as far as I observed, did not try to elude us; she was going in the direction of Havana, and we

towards her, and during the "chase," so called, I should think we were going away from the "Indiana."

Q. Was the "Panama" going away from the "Indiana" or approaching her?

A. No; she was approaching the "Indiana."

Q. Did you make any further observations as to the distance and direction of the "Indiana?"

A. Well, I saw her constantly except, of course, during the time I was looking at some other object specifically; but I heard Capt.
107 Everett ask whether any other ship was in sight, and a mate on the "Mangrove" came up and reported to Capt. Everett and Cadet Palmer, who was on the bridge, that the "Indiana" was in sight, and the cadet reported that statement to Capt. Everett, and Capt. Everett, without turning to look, said that couldn't be, because that was not the direction in which the "Indiana" was.

Q. At this time, when the mate reported this fact to Capt. Everett, did you yourself observe whether the "Indiana" was in sight?

A. I did, and saw her.

Q. When the vessel stopped and the boat was sent from the "Mangrove" to the "Panama," did you then notice whether the "Indiana" was in sight?

A. She was in sight. There never was a time from the time that the chase began when the "Indiana" was not in sight. There might have been times when we were so close under the side of the "Panama" that we couldn't have seen her just for a moment.

Q. Please state whether or not the time when the vessel stopped and the boat was sent from the "Mangrove" to the "Panama" the "Indiana" was within signal distance.

A. She was.

Q. Will you please explain what you mean by "signal distance?"

A. I mean the distance at which flags could be read from the bridge of the "Mangrove." I did not have any glasses during the entire chase; I used only my naked eye.

Q. Please let us know as correctly as you can what appearance the "Indiana" presented at the time, and what you could see about her.

A. I could clearly make out the entire ship, including her whole
108 hull—certainly a part of her hull—from the very begin'ing, so clearly and unmistakably the "Indiana" that the question of what ship it was never came up at all.

Q. What facts are there that lead you to the conclusion that signal flags could be read from the "Mangrove" on the "Indiana" at that time?

A. My observation of the distances at which we have read signal flags in fleet or in communicating with single vessels.

Q. Can you state the name of the mate on the "Mangrove" to whom you referred?

A. I can not. There were two or three mates on the vessel, and I simply knew him as a mate in the light-house service.

Q. Please state whether at any time you made any observation in regard to the eyesight of Lieut. Comdr. Everett.

A. I did.

Q. What were those observations?

A. I observed that his eyesight was very defective, and he told me so in so many words, that he had great trouble with his eyesight.

Q. What observations did you make upon which you base your conclusions?

A. On certainly two or three occasions I heard him ask for compass readings after having looked at the compass himself, and on one or two occasions I heard him ask for the arrangement of the Ardois signals at night when they were in plain sight and easily read by anyone with ordinary eyesight.

109 Q. Did you yourself read them at that time?

A. I observed them—their arrangement. I am not sufficiently familiar with signals to be able to read them easily, but I could observe the order of their arrangement—the red and white arrangement of lights.

Q. Did you observe the compass readings to which you have referred?

A. I did not, but that was while it was daylight and while anyone with ordinary eyesight standing by the compass could read it.

Q. Was the compass reading given to him?

A. It was.

Q. Are you positive that he had an opportunity to read the compass himself?

A. Yes; he was standing right beside it.

Q. Was the situation of the person who gave him the reading any different than his?

A. No.

Q. How long had you known Lieut. Comdr. Everett when you went on the "Mangrove?"

A. I had never met him previous to that.

Q. What acquaintance have you had with him since?

A. I met him once or twice casually in the hotel in Key West, only, shortly after that time.

Q. For a period shortly before or after this date had you made any observations as to the speed of the U. S. S. "Indiana?"

A. Yes.

110 Q. Please state the result of this observation.

(Question objected to on the ground that this is not the best evidence of what the speed of the "Indiana" was.)

A. Well, I think the limit of speed of the "Indiana" was at that time and for a considerable period of time before and after that time not greater than seven or seven and a half knots per hour.

Q. In the deposition of Apothecary Ralston, on page twenty-five of the record of this case, it is stated that you remarked to him later that the "Indiana" was out of signal distance and wouldn't share the prize. Please state whether this is true.

A. That is absolutely false.

Q. Did you have any conversation that you can remember with Apothecary Ralston in regard to the capture by the "Indiana" of the "Panama?"

A. I do not recollect any conversation that I had with him of any character.

Cross-examination by Mr. MICOU:

Q. What time, Chaplain, do you first remember seeing the "Indiana" after the chase began?

A. Well, as soon as the chase began there was the usual excitement—commotion—attending such an incident, of course, and perhaps for a moment or two my attention was fixed entirely upon the "Panama," and the work on board the "Mangrove" with a view of capturing the "Panama," and then almost immediately I looked for the
111 "Indiana," having an interest in her whereabouts, and discovered she was in sight.

Q. Was she coming towards you at that time?

A. Yes.

Q. Towards the two vessels when you first saw her?

A. Yes, sir.

Q. Could you make out her hull at that time as distinctly—with the distinctness that you have described—that you were able to so do, I mean when you first saw the ship?

A. I am not absolutely clear as to that; I was very sure that it was the "Indiana." Even now, I can remember the appearance of her works—her turret and guns and bridge, and can see the black smoke pouring out of her funnels and going astern as she came in our direction.

Q. You were, of course, quite familiar with the "Indiana;" she was the ship you were on?

A. Entirely so.

Q. And you had only left her a short time before?

A. Yes, sir.

Q. The other ships mentioned as claiming in this case besides the "Indiana" and "Mangrove" are the "Wilmington" and "New York." They were really the only ships anywhere near there, so far as you knew, were they not?

A. Yes, sir.

Q. There was no other battle ship there, was there?

A. Not that I know of.

Q. How high out of water does the battle ship stand?

A. To what part of the battle ship do you refer?

Q. I mean as you can see her; how high up does she stand?
112 She doesn't have a low seaboard; she is high.

A. She is moderately high; high as compared with a monitor, but not as compared with a cruiser.

Q. But her general appearance is different than a cruiser, is it not?

A. Yes, sir.

Q. At how great a distance would you say that you could distinguish the "Indiana" from a ship like the "New York?"

A. Well, with a clear atmosphere, I should say six or seven miles.

Q. There is quite a difference in the appearance of the two ships?

A. There is.

Q. There is a difference in the number of the smokestacks?

A. Yes, sir. That, however, wouldn't be apparent bows on.

Q. What is the difference in the smokestacks?

A. The "Indiana" has two and the "New York" has three.

Q. Then, with bows on, couldn't you distinguish three columns of smoke instead of two?

A. No; not the mere matter of smoke, as the smoke as it drifts astearn makes but one column.

Q. The "Indiana" was coming towards you, then, bows on, at the time that you saw her?

A. Yes, sir.

Q. You say that you mentioned this fact to Yeoman Murray?

A. Yes, sir.

Q. What was it that you said to him with reference to the "Indiana"?

113 A. Well, we mentioned or spoke of the fact that the "Indiana" was coming up, and that, most likely, had had something to do with the easy surrender of the "Panama," because at that time we understood that she was an auxiliary cruiser and had guns aboard of her.

Q. The "Panama" had not surrendered at this time that you speak of, had she?

A. Well, not perhaps at the first part of our conversation, but during the conversation.

Q. I thought that it was during the chase that you remarked to Chief Yeoman Murray——

A. We were in conversation about the capture and about the "Indiana" during almost the entire time of our seperation from the "Indiana." We were the only two people from the "Indiana," and naturally were together. During the very first part of the chase Yeoman Murray was at the guns; he fired one of the guns.

Q. He did?

A. Yes, sir.

Q. Then it was after the two vessels had stopped that this conversation took place?

A. No; after we saw that there was to be no resistance from the "Panama."

Q. Well, now, I thought you said that that was after you came within hailing distance, and Capt. Everett hailed the "Panama," that you discovered that she wasn't going to resist.

114 A. We discovered at the very beginning that there was no resistence; that there was no attempt at resistence. There was no evidence of resistence at all at any time.

Q. Well, now, what I want to get at is this: If Yeoman Murray was busy at one of the guns, as you say; that you talked pretty continuously about the "Indiana" while you were together, when it was that you first pointed out to him that the "Indiana" was coming up? Was it after the third gun had been fired?

A. I don't know whether it was after the third gun had been fired or not. It was after one of the guns, at least, had been fired.

Q. There were other people on the deck?

A. Yes, sir; everybody was on deck.

Q. Did you have any conversation with anybody else about the "Indiana" coming up?

A. No; I think not.

Q. During the chase?

A. No; I think not. Murray and myself only after he had fired this gun. I think he fired only one gun. We were practically supernumeraries—we had nothing to do; about everybody else had something to do.

Q. How long did the chase probably last from the time that the "Panama" was sighted and the "Mangrove" started for her and the time that the boat was lowered to go to her?

A. Twenty minutes, perhaps. It was a very short chase. As I have already explained, it was really no "chase." The ships were nearing each other, and there was no attempt on the part of the "Panama," as far as I saw, to escape.

115 Q. Did Capt. Everett hail the "Panama" with his trumpet? He wasn't close enough to call from the side of the ship, was he?

A. When he finally hailed her, we thought she had stopped, but he noticed the churning of her propeller. Whether she was doing that to go forward or to go back I do not think any of us know, but he said, "'Panama,' there, if you don't stop I will fire into you; you are my prize;" and we were not over two hundred yards apart.

Q. When you speak of your knowledge of signal distance, you never have given or received signals?

A. No; my knowledge is only that of an observer.

Q. You estimate that the "Indiana" at the time of the capture was within three or four miles of you?

A. Yes, sir.

Q. And you base that upon her appearance and distinctness with which you could make out her outline?

A. Yes, sir.

Q. That was at the time that the boat was sent over that you speak of?

A. About that time.

Q. And you say that after—that the boat was there about some twenty minutes—something like fifteen or twenty minutes?

A. I should think so.

Q. Then you got under way at about six knots and went towards the "Indiana?"

A. Yes, sir.

116 Q. Well, now, suppose that the "Indiana" had been going at that time at the rate of ten knots when she was coming towards you all of the time, how far would she have come in twenty minutes?

A. That would be one-third of ten and a half knots, or three and a half knots. I would like to answer that I am absolut'ly certain that the "Indiana" was not making any such speed as that. I have just answered a question in arithmetic.

(Counsel objects to the last preceeding question upon the ground that it is a mere arithmetical proposition, and based upon supposition contrary to the evidence of the witness.)

Q. What did you say that you were certain the speed of the "Indiana" was at that time?

A. Not over seven knots.

Q. Suppose the "Indiana" was making seven knots, how far would she have come in twenty minutes?

A. Two and one-third knots.

Q. Then if you were only three or four miles away at the time that

this capture was made, and you were only three or four miles away from the "Indiana" at the time the capture was made, and the vessel stood still for twenty minutes and the "Indiana" came towards you for twenty minutes, or two and a third knots, she would have been very close to you at the time that you got under way again, wouldn't she—right up, very close, so everybody could see her?

A. Yes, sir.

Q. She would have been within something like a knot of you, wouldn't she—within a knot, or a knot and a half?

A. Not if she was four miles away.

117 Q. You say that she was four miles away when she started, and if she came two and a third knots she would have been one and three-quarters knots from you?

A. Yes, sir.

Q. Now, you say that you were about twenty minutes reaching the "Indiana" after you got under way and was going towards her, and that you were going at about six knots. Now, how many knots would the prize and the "Mangrove" have made in twenty minutes at six knots?

A. Two knots.

Q. And how much would the "Indiana" have made in twenty minutes at seven knots?

A. Two and one-third knots.

Q. Now, then, if those were the speeds, must you not have been about six and two-thirds knots from the "Indiana" instead of three or four miles at the time that this capture was made?

A. I am not absolutely certain that that was the speed.

Q. I am putting to you the question "suppose" those were the speeds?

A. That is a mathematical proposition of an absolute character.

Q. Is that correct as a mathematical proposition?

A. Yes, sir.

Q. You said, if I understand you correctly, that you were one or two—two or three minutes getting—that there was excitement for two or three minutes when the "Panama" was first sighted, and that just about the time that this excitement subsided that you looked and first saw the "Indiana."

A. Yes, sir.

118 Q. Well, that would have been, would it not, about fifteen minutes before the chase terminated; that is, I understood you to say that the chase lasted for twenty minutes. Is that correct?

A. Yes, sir; that was my estimate.

Q. Do you consider that the "Indiana" was within signal distance when you first saw her?

A. Yes, sir.

Q. Well, how far, at seven knots, would the "Indiana" go in a quarter of an hour?

A. One and three-quarters knots.

Q. If you had been six and two-thirds knots away from the "Indiana" at the time of the capture, according to this estimate of how far she ran, namely, one and three-quarter knots in fifteen minutes, how far away would you have been at the time that you first saw her at the commencement of the chase?

A. Eight and five-twefths miles.

Q. Would you undertake to say that signals could be read eight and five-twelfth miles?

A. No; I wouldn't say that.

Q. Would you undertake to say that signals could be read six and two-third miles?

A. Well, under certain conditions I think they could.

Q. Wouldn't that have to be the most favorable circumstances?

A. They would have to be favorable conditions. I am sure, however, that signals have been read at greater distances.

119 Q. In your opinion, if the "Indiana" was only four miles away at the time of the capture, would it have taken forty minutes for her to have reached you with the "Mangrove" also going towards the "Indiana" for twenty minutes of that time?

A. No; I don't think it would have taken that long.

Q. Now, how near was the "Indiana" to the "Mangrove" when she fired the gun across the bow of the "Panama"—when she, the "Indiana" fired the gun across the bow of the "Panama?"

A. I am not sure as to that.

Q. She was a good deal nearer than she was when you estimated that she was four miles away at the time of the capture?

A. I wouldn't say that she was a good deal nearer. I wouldn't say how much nearer she was.

Q. Can you form an estimate—give us some idea of how near she was at that time. If you can, form an estimate of how near she was forty minutes before. You have estimated that at the time of the capture she was within three or four miles of you; you have estimated that the vessel stopped at the time of the capture for about twenty minutes, and that your vessel went on for about twenty minutes before the time that the "Indiana" fired across the bow of the "Panama;" now, what I ask you is, can't you estimate also how far the "Indiana" was from the "Mangrove" and the "Panama" when the "Indiana" fired across the bow of the "Panama?"

A. I haven't made any estimate as to how far we went before the "Indiana" fired across the bow of the "Panama;" I haven't made any statement regarding that.

120 Q. Didn't you make a statement that the "Indiana" was within about from three to four miles of you at the time that the "Mangrove" came up with the "Panama?"

A. Yes, sir.

Q. Well, now, did you estimate that the two vessels, the "Panama" and the "Mangrove," stopped for about twenty minutes at the time that Ensign Dayton went aboard of the "Panama?"

A. Fifteen or twenty minutes, I think, I said.

Q. And didn't you estimate that when they got under way again, that you went on towards the "Indiana" for about twenty minutes before the time that the "Indiana" came up with you by firing across the "Panama?"

A. I didn't say anything about the firing. I don't know anything about that.

Q. You do not? You stated that you went towards the "Indiana,"

and when you came up with the "Indiana" you got a prize crew from her?

A. Yes, sir.

Q. And as you were approaching the "Indiana" with the "Panama" did not the "Indiana" fire a shot across the bow of the "Panama?"

A. I have understood so, but I have no recollection regarding the shot.

Q. You do not remember anything about that shot?

A. No, sir.

Q. Well, wouldn't a shot fired under circumstances like that naturally attract the attention of everybody on board?

A. I suppose so, but there doubtless were a great many things
121 that occurred, or might have occurred, that all of us didn't notice in the excitement attending the capturing of the "Panama." If I remembered anything about that shot I would not hesitate a moment to tell you everything I remembered about it.

Q. I do not doubt that. What I want to get at is for the purpose of estimating how close you were at that time. How close did you come to the "Indiana?"

A. So close that Capt. Everett, standing on the bridge, reported what he had done to Capt. Taylor, and arrangements were made between the captains for a prize crew to come from the "Indiana" to the "Panama."

Q. You spoke of making a study of the speed of vessels; how did you do that—just from observation?

A. On the quarter-deck we have a patent log, the revolutions of which indicate the speed of the ship, and I have always observed that very closely.

Q. When you say that the "Indiana," in your opinion, was not making over seven knots at that time, do you base that on your observations of the vessel as you looked at it at that particular time or from your general experience when you were on board of her?

A. From my general acquaintance of the speed of the "Indiana" under all conditions.

Q. Do you base it upon the length of time that it took the "Indiana" to get to your ship after the capture?

A. No; I haven't made calculations to that effect.

Q. Now, was there anybody else on that ship, except Chief Yeoman Murray, that you spoke to about the "Indiana" being in signal
122 distance during the chase?

A. Not to the best of my recollection.

Q. Was the deck crowded with people—everybody on deck?

A. Practically everybody, except the engineer's force, of course. But Murray and myself were standing on the deck just forward of the pilot house by ourselves, not at any great distance from anybody else, but to ourselves.

Q. Were you right near the captain?

A. Yes; within fifteen or twenty feet of him.

Q. When was it that Commander Everett told you about his eyesight; that day?

A. Yes, sir.

Q. How did that come about? Did you remark anything about his eyesight or did he just volunteer the information?

A. He spoke to me about it in his cabin in the evening in explanation of the difficulty he had in reading the compass and signals which I observed.

Q. You say you can not remember the name of the mate who reported that the "Indiana" was in sight?

A. No; I think there were three of them on board the "Mangrove" and it was one of those three. I remember the appearance of the man and would know him if I saw him.

Q. At what time was that in connection with the chase? Was it after Dayton had gone aboard the "Panama?"

A. I am not clear as to that. I remember that Captain Everett asked the question if any other ship was in sight and this mate reported
123 to him that the "Indiana" was in sight, and Cadet Palmer, who was standing alongside of him, repeated the remark to the captain, and the captain said in effect that couldn't be, for that was not the direction the "Indiana" was in. They reported the direction, and he said that couldn't be, "for that is not the direction in which the 'Indiana' is."

Q. Where did that occur?

A. On the starboard side of the bridge.

Q. Who was present at the time besides the mate, Capt. Everett, and Cadet Palmer?

A. They were the only three on the bridge.

Q. Were you on the bridge?

A. No, sir; I was just where I had been during the whole chase, right by the pilot house on the superstructure deck; they were just over my right shoulder.

Q. Was the mate on the deck or on the bridge?

A. The mate, when he started to the captain, started from the "berth deck" or the "forecastle" forward and came up the two decks and reported to the captain.

Q. After you had got your prize crew from the "Indiana," then you went on to the flagship?

A. We were directed by Capt. Taylor to report to the flagship.

Q. And then went to Key West?

A. Yes, sir.

Q. Did you mention to anybody before you got to Key West, besides Chief Yeoman Murray, that the "Indiana" had been in signal distance?

A. I did not.

124 Q. Did you go ashore when you got to Key West?

A. I did.

Q. Were you not the first officer that got ashore?

A. Of whom?

Q. Of the officers of the "Mangrove?"

A. I do not know as to that.

Q. Did you not start to go in with the captain and he had to go to report to the senior officer present, and you went in before he did?

A. I do not remember about that. It is possible, but I have no recollection.

Q. Wasn't there considerable excitement at Key West when you got there?

A. There was. I was met at the dock by a number of reporters representing the New York papers.

Q. And were you not the first officer to give out an account of the capture?

A. I do not know. I gave out an account of the capture.

Q. You state in your interrogatories here "During the chase I saw the 'Indiana' coming rapidly towards us." Do you call seven knots "rapidly" for the "Indiana?"

A. It was at that time, sir.

Q. You stated that this statement of Apothecary Ralston as follows, "that Chaplain Cassard also remarked to me later that 'Indiana' was out of signal distance and wouldn't share the prize" is not so; that you didn't make a statement of that kind?

A. I made no such statement.

125 Q. Didn't you make the statement there on the bridge to Capt. Everett and Cadet Palmer, and Ralston present, that the small vessels got all of the prizes, or something to that effect? And "Captain, you have a good prize and all to yourself?"

A. I have no recollection of any such statement, and such a statement would have been absurd, because the blockade had just begun; there was no experience then as to who got the prizes.

Q. There was nothing of that sort said by you?

A. Absolutely nothing.

Q. In the statements which you gave out to these reporters which you found there you included the "Indiana" as being in the capture?

A. I did.

Q. And yet you never, before the ship got in, except to the yeoman who was with you from your own ship, said anything about having seen the "Indiana" during the chase?

A. The question wasn't raised. The "Indiana" was reported on the bridge to the captain. I didn't know there was any question about it.

Q. Didn't you say that you heard the captain reply that it could not be the "Indiana?"

A. Yes.

Q. Wouldn't you call that raising a serious question?

A. She was absolutely reported to him by one of his junior officers.

Q. Hearing just such a remark as that, and your being an officer from the "Indiana," wouldn't it have been natural to have spoken

126 to other officers and people aboard the ship about the "Indiana," and pointed her out in such a way to make it sure that there couldn't be any mistake about it afterwards?

A. I have never interfered in any official matter on board ship. That would have been an interference on my part to insist that the captain recognize a statement if he didn't even care to look himself.

Q. Wouldn't it have been natural to have asked other people if they had seen the "Indiana," knowing that this question would come up later?

A. I didn't think of such a matter at all. In fact, I didn't consider that the question could come up. I was so thoroughly satisfied that it was the "Indiana" that the question when it came up was a surprise to me.

Q. You state here in your affidavit, on which the motion and petition to take testimony is grounded, that at the time the mate reported, "Lieut. Comdr. Everett and Cadet Palmer were close together at the time and the report made by the mate was repeated by Naval Cadet Palmer to

Lieut. Comdr. Everett, both the mate and Palmer indicating the direction of the 'Indiana.'" Did Palmer say or do anything at that time indicating that he saw the "Indiana?"

A. Yes; he pointed her out.

Q. How; with his hand pointing in the direction?

A. Yes.

Q. Who else was around there at this time that heard the report of the mate?

127 A. They were the only people on the bridge.

Q. Anybody down below near you that would have heard it?

A. Murray would have heard it if he had been there. I don't know if he was there at that particular moment or not.

Q. You said, speaking of what you meant by signals, that signal flags could be read from the bridge of the "Mangrove." Is that the usual place from which signals are given?

A. That is the usual place from which they are read; they are run up to the signal yards.

Q. You were speaking not of reading signals from the "Indiana," but of the "Indiana" being near enough to have read the signals from the bridge of the "Mangrove?"

A. What I meant to say is that any ship that distance from another ship could, under ordinary circumstances, read the signals.

Q. Now, you said, in your interrogatories on page 39, "I mean by signal distance such distance as would permit of discernment of signals, either visual or sound, and the rendering of aid in reply to signals, if required." What signals would you say could have been read from the vessels? Could wigwag signals have been read, do you think?

A. No; I wouldn't say that the wigwag signal could have been read.

Q. Then you mean, as to the daylight signals, signals made by the combination of colors and flags as distinguished from the movements of the flag?

A. Yes, sir.

Q. When you speak of "sound signals," do you mean you were

128 close enough to have heard signals with the whistle?

A. That is what I meant by sound.

Q. Do you think at that time you were close enough to have heard that sort of signal?

A. Yes, sir.

Q. That you were close enough during all of the chase to have heard all those signals?

A. Yes, sir. There is this distinction between the "wig wag" and the ordinary code signals: The "wig wag" is made usually from some low point on the ship, but the other signals are from the signal yard.

Q. Was the prize "Panama" between the "Mangrove" and the "Indiana" during the chase?

A. No; not during the chase.

Q. Was the "Mangrove" nearer to the "Indiana" than the prize during the chase?

A. Yes, sir.

Q. Well, which side of the prize did the "Mangrove" come up on—the side next to the "Indiana" or on the other side?

A. My recollection is that they rounded and that by some means the "Mangrove" was north of the prize, the "Indiana" being south of her.

Q. Are you certain that at the time that you could see the "Indiana," make out her hull, and so on, that that was before the capture took place?

A. Oh, yes.

Q. How was it that Chief Yeoman Murray happened to be stationed at the gun of the "Mangrove?" He was, like yourself, a pas-
129 senger, wasn't he? How did that come to be?

A. He wasn't stationed at the gun; he went to the gun, and, as I understood it, the "Mangrove" was short-handed, and her crew was made up of "green people" who were not acquainted with the duties, and for that reason, I think, it was perfectly natural for him to go to the gun.

Q. Were you there with him while he was at the gun?

A. Not with him.

Q. Near him; standing close by him?

A. I was on the superstructure above; this gun was on the forecastle.

Q. Did you have any conversation with him about this time about the "Indiana?"

A. No.

Q. Can you remember when you first had a conversation with him about the "Indiana?"

A. I think it was after he fired the gun.

Q. Were these guns fired in pretty close succession—the three guns?

A. Well, they were comparatively short intervals; they were not one after the other in the way of rapid fire, but I think they were at comparatively short intervals.

Q. How long after the last gun was fired that Commander Everett hailed the "Panama?"

A. That was a very short time. I don't remember exactly how long; I can't estimate.

Q. Was your flag flying on the "Indiana?"

130 A. What do you mean—the colors?

Q. Yes.

A. I do not know by observation; I suppose so.

Q. Is it customary for them to fly when a ship is in chase?

A. Yes, sir.

Q. You were not near enough to see any flag on the "Indiana?"

A. I don't know about that. Ordinarily we wouldn't have seen it; that is on the flagstaff at the extreme stern of the ship.

Q. Couldn't you distinguish her smokestacks distinctly at that distance?

A. I could distinguish all of her upper works; everything that would ordinarily be in sight.

Redirect examination by Mr. KING:

Q. Mr. Cassard, will you please state if there was anything in the condition or situation of the vessel, or the light which would make it harder or easier to have read signals from the "Indiana" to the "Mangrove," or from the "Mangrove" to the "Indiana?"

A. Nothing, except that the "Mangrove" was not as high out of the water as the "Indiana."

Q. And was this difference such that signals could not have been read hoisted on the "Mangrove" by the "Indiana" at the time of the capture?

A. I don't think so.

Q. What size is the flag carried on the stern of war vessels in comparison to signal flags?

A. The size of the flag varies so greatly that it is very difficult to say.

131. Q. Do you remember the signal which the "Indiana" gave to the "Mangrove," "Come within hail?"

A. No; I do not remember.

Q. Please state whether you would say that when the chase began the vessels were $8\frac{5}{12}$ miles distance.

A. No.

Q. Please state whether you would say that at the time of the capture the vessels were $6\frac{3}{8}$ miles distance.

A. No.

Q. Please state whether you would say that at either of the times mentioned the vessels were near the distance stated in the last two questions.

A. No; there was no time when the "Indiana" was more than four miles from us, according to my best judgment.

Recross-examination:

Q. If the "Indiana" was only four miles from the "Mangrove" at the time that the "Panama" stopped, do you consider that it would have taken forty minutes, with the "Indiana" coming towards you, and twenty minutes the "Mangrove" going towards the "Indiana" for the vessels to have come within hailing distance?

A. No; I don't think it would.

Q. What time do you consider that the capture occurred?

A. Do you mean the hour?

Q. Yes.

A. I don't know as to that.

Q. You made no note as to that at all?

132 A. No, sir.

Q. How long was the trip to Key West—what time did you get there?

A. We arrived there early the next morning.

Q. Wasn't there a good deal of talk over this capture on board the ship before you got into Key West?

A. I don't know. I turned in late in the evening, and got up the next morning and went ashore. I didn't have any conversation on the subject aside from that which I had with Murray during the chase.

Re-redirect examination by Mr. KING:

Q. I would like to have you state your explanation as to why the distance at the time when the boat went from the "Mangrove" to the "Panama" there was only four miles between the "Mangrove" and the "Indiana," when, according to the times given from the "log," about thirty-five minutes elapsed from that event till the "Indiana" reached the "Mangrove" and the "Panama?"

A. Well, I think it was due to the fact that the "Indiana" was not coming at a very high rate of speed.
Q. What would you have to state as to the speed of the "Mangrove"?
A. The speed of the "Mangrove" was also a low speed.

W. G. CASSARD.

133 WILLIAM G. CASSARD, a witness previously called and sworn to testify the truth, the whole truth, and nothing but the truth, and on this 24th day of August, A. D. 1901, recalled as a witness for and on behalf of the officers and crew of the U. S. S. "Indiana," testified as follows:

Redirect examination by WILLIAM B. KING:

Q. Did you, at any time, tell Commander Everett that no other vessel was in sight, or that no other vessel was within signal distance at the time of the capture, or anything else to that effect, or like that?
A. I did not.

W. G. CASSARD.

On this ninth day of October, A. D. 1901, in the city and county of Newport, and State of Rhode Island, then and there personally appeared the aforenamed witness, William G. Cassard, and made oath that the foregoing thirty-two pages of testimony by him given is a true and correct statement of the facts therein questioned as appears to the best of his knowledge and belief.

Before me
[SEAL.]

MAX LEVY,
Notary Public.

134 HENRY C. TAYLOR, a witness called on behalf of the officers and crew of the U. S. S. "Indiana," having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by WILLIAM B. KING:

Q. State your name, age, and occupation.
A. Henry C. Taylor; 56 years of age; rear-admiral, U. S. Navy.
Q. On what duty were you engaged in April, 1898?
A. In command of the battle ship "Indiana."
Q. Whereabouts were you on the 25th of April?
A. On the blockade off Havana, lying a long distance northeast of the port.
Q. Please state whether on that day you dispatched the U. S. S. "Mangrove" to Key West.
A. I did, of my own motion, or carrying out the orders of the commander in chief; I don't remember.
Q. About what time in the afternoon was that?
A. In the later part of the afternoon.
Q. After the "Mangrove" left you, please state whether you saw any strange vessel, and, if so, what vessel it was.
A. I saw a strange vessel to the northward after having left the "Mangrove," and proceeded a short distance to the southward towards the flagship "New York."

Q. The log of the "New York," as contained in the report of this case, shows certain signals between the "Indiana" and the flagship. Will you please state whether you took any steps to discover
135 the colors and character of the strange vessel after the enquiry of the flagship to the "Indiana" at 5.52 p. m., "What colors does strange vessel carry?"

A. We turned to the northward and steered toward the strange vessel. I interpreted the signal to indicate a wish on the part of the flagship to have me investigate.

Q. It appears by the log that at 5.55 you reported, "Cannot see," and that at 6 p. m. you responded, "Strange vessel changed course to eastward;" can you state, in relation to either of those or to the preceding signal just quoted, when you turned and went in the direction of the strange vessel?

A. To the best of my knowledge and belief, I turned immediately after the flagship's enquiry, and that any subsequent signal was, as I remember, made while we were steering away from the "New York" toward the stranger.

Q. After you started in the direction of the strange vessel, please state what you saw in regard to the movements of the "Mangrove" and the strange vessel.

A. The principal points that I remember were seeing them approach each other, first. Next, the gun fired—one or more guns from the "Mangrove;" next, the appearance of a boat in the water between the two; next, the apparent steaming away of the prize from the "Mangrove," causing me to fire a shot across her bow, as I feared the boat had not sufficient prize crew aboard to take possession of her; next, communicating by hailing by ordinary voice or by megaphone, and the putting of a prize crew on board from the "Indiana." That is all I remember of the principal incidents.

136 Q. You have spoken about observing the firing; will you please state whether you can now recall whether you recognized the firing by hearing the shot or by what you saw?

A. I saw the smoke shoot from the muzzle of the gun; I can not remember whether I heard the sound. It would not have impressed me after having seen the smoke, as light guns were frequently heard at that time, used to attract attention to signals and to hold up vessels to be searched. I do, however, remember seeing the smoke as it shot from the gun, quite distinctly.

Q. I would like to have you describe as definitely as you can just what you saw of the smoke, and of its motion.

A. I saw, as usual in such cases, a horizontal line of jet, or tongue of smoke shoot from the side of the "Mangrove" in the direction of the prize, and instantly afterwards it became a solid cloud of smoke which the wind blew away, loosing the form of a jet, line, or tongue.

Q. Will you please state with like definiteness what you saw as to the boat in the water?

A. I saw the boat distinctly. I do not remember whether my attention was called to it first or whether I saw it without this notice; and I can not remember whether I used glasses, the regular binoculars, in seeing it distinctly; my impression is that I saw it first without binoculars and that I afterwards used binoculars and saw it more plainly.

Q. What was the condition of the light at the time when you saw this boat?

137 A. It was good. The sun was low; I do not remember whether it was just above the horizon or just below; the log would show that; but objects were visible with sufficient distinctness. The twilight of the tropics, which comes on with rapidity, and which was approaching, had not, as I remember, obscured the horizon perceptibly. The boat was distinct, the gun fire more distinct; the outlines of the "Mangrove" and prize quite distinct.

Q. Please state whether in your opinion, at the time when the boat was dispatched from the "Mangrove" to the "Panama," the "Indiana" was within signal distance of the "Mangrove."

A. Yes, within good signal distance. I did not doubt then, and I do not now, that any signal, either ordinary or extraordinary, would have been plainly perceived and recognized by us and answered by us.

Q. Was it light enough then to have used the ordinary day signals?

A. When I saw the gun, and when I saw the boat, yes, light enough for day signals.

Q. On what do you base your opinion that the "Indiana" was in signal distance?

A. Principally upon my observations of affairs as I stood upon the bridge of the "Indiana" and approached the "Mangrove" and her prize. In addition by many minor circumstances which led me at the time not to question the fact at all. Among these were the short time I had spent since leaving the "Mangrove," by the slow speed at which the "Indiana" then habitually went, by reason of the defects and lack of repairs

138 of her boilers and by the foulness of her bottom; these defects prevented any great speed at whatever expenditure of energy, and I was especially careful not to strain her by forcing her, because it was a question whether she could last out the war and be present in the engagements of the war if we were not especially careful of her. Another circumstance was the opinion generally held in the squadron of the very slow speed of the "Mangrove," which had been reported to me in conversation as being able to keep up the speed of not much more than seven knots. I believed her to be going less than six knots when she left me to go over to Key West that afternoon.

(Counsel on behalf of "Mangrove" objects to so much of the answer which refers to hearsay evidence of the speed of the "Mangrove.")

Q. Please state the facts in regard to the foulness of the bottom of the "Indiana" at that time.

A. Her bottom was very foul. She had been in dock in Halifax the preceeding summer—about nine or ten months before. She had been lying still for long periods in waters such as the Tortuggous—very favorable to the growth of grass and barnacles.

Q. Did you find it necessary to have her bottom cleaned after this time?

A. Her slowness had become so phenominal that I shortly afterwards asked for a large force of divers to be sent from the Northern navy-yards, and they were sent and cleaned the bottom off the reef at Key West, making marked difference in her speed.

Q. When was this?

A. Probably about three weeks after this occur'ance. It was
139 upon our return from the expedition and battle of San Juan de Porto Rico, during which the speed of the "Indiana" was found to absolutely need some attention to enable her to continue the campaign.

Q. Please state what was the condition of the "Indiana's" boilers at this time.

A. Her boilers had failed entirely two months before the war broke out, while on the way with the squadron from Hampton Roads to the Dry Tortugous. We did what we could by retubing the boilers in Dry Tortugous, working twenty-eight days, night and day, to be ready for the war; but we only corrected a part of their weakness, which was also in the shell of the boiler as well as the tubes, and during the war we were obliged to carry the least steam possible for our work, in order to save the boilers and not have to be sent home and miss the war.

Q. When the "Indiana" turned to go in the direction of the "Mangrove" and the "Panama," at what rate of speed were you moving?

A. We moved at varying speeds during that period of twenty-five minutes or half hour. We were not in haste when we first started towards the prize, no reason then appearing for haste. Later, when the gun was fired and a doubt appeared to us whether the "Mangrove" would certainly secure her, there was a quickening of the speed for a period of a few minutes—how many, I do not know—which was reduced again to her regular slow speed as soon as we were within easy gunshot, or before that—as soon as we saw that she was within our reach
140 and grasp. I should say that the average of these speeds for that half hour ranged from 8 to 7¾ knots. Between those two would be the average of what we made—would be about that, from 8¼ to 7¼; in other words, in the neighborhood of eight knots, averaging.

Q. As you proceeded towards the "Mangrove" and the "Panama" after you saw the boat in the water, please state whether these two vessels continued in as plain sight as when you started.

A. After the boat was seen in the water the twilight began and it progresses rapidly in those waters; signalling would have been easy when the boat was in the water by day signals. Signaling by the ordinary night signals would have been still easier within ten minutes following that time; in other words, it was the transition period of twilight—from the daylight period of signaling to the night period of signaling.

Q. While you were moving towards the vessels was there any time when either or both of the vessels was not visiable from the "Indiana," after you had seen the boat?

A. They were at all times visiable. I do not remember whether for a moment one may have masked the other in the manouvering. I do not recollect that this was so. I believe that they were at all times visiable from us—I know that they were visiable and that at no time did one mask the other.

Q. Before you came up to the vessel had you had any knowledge or information that the prize was the "Panama?"

A. I believed her to be so, as the "Panama" was expected and it was stated on the bridge during our approach that she was probably
141 the "Panama" and answered her description, but there was no certainty about it.

Q. How long have you been in the Navy, Admiral?
A. Forty-one years next month.
Q. And when did you first have command of a naval vessel?
A. The first command was in 1874, 27 years ago.
Q. What was your service during the civil war, in a general way?
A. On the Willmington blockade, with a cruiser called the "Shenandoah," one of the blockading fleet, and carrying the pen'ant of the senior officer of the blockade; in other words, the flagship of the fleet. I was an ensign at the time, keeping a regular watch, and in action commanding a division of guns on the ship.
Q. Were you familiar with the rules governing questions of capture and prizes in the civil war?
A. I was familiar to the extent of one rule which was constantly exercised in possible prizes and in the frequent chase of prizes.
Q. Can you state what was the usual rule in the civil war as to what fixed the exact moment of capture.
A. The custom of our blockade, which was off Willmington, North Carolina, was to regard the passing of the tow line from the captor to the prize as one unquestioned sign that she had become in the possession of the captor; in other cases where towing was not necessary it could be fixed by the completion of the act of putting on board the prize a
142 prize crew and officer and their examining her papers and taking charge of her; those are the only circumstances that I remember but they are fixed somewhat by questions that arose then and which were argued by prize courts.
Q. Can you make an estimate of the time that the "Mangrove" and the "Panama" remained stationary while you were approaching her?
A. I did not observe them moving at all, except the mano'uvering necessary to sending a boat to communicate. After a short period the twilight of which I have spoken had begun, and for a short period they may have moved, and we did find the prize moving slowly in our direction as we drew up to them in the twilight, but we believed that they had just at that moment gotten under way, and from my recollection of the time during which twilight slightly obscured them that period was not long enough to have permitted them to have gained even full headway. This is stated without knowledge of the times by the clock, as I recollect the intervals and their duration.
Q. How long would it take a vessel like the "Mangrove," if running at full speed and then stopping entirely to get under headway and at full speed again?
A. I do not know. Judging by experience with large ships, which take in the neighborhood of twelve minutes to gain their speed, the "Mangrove" should gain hers in from six to eight, I should think, being a small vessel.
Q. Please state fully the reason why you fired the shot across the bow of the "Panama."
A. I fired it, for my own part, because I feared she would
143 escape from the "Mangrove." Officers who were on the bridge with me spoke of her colors not being down. This was, as I remember, an added reason for firing a gun, but primarily I gave an order to fire because I feared that the "Mangrove" had not completed the capture, or, having completed it, the vessel might still escape her.

Q. Are you familiar with the use of gun signals as prescribed by the regulations?

A. I am familiar as an officer, as I have served for a long time in squadron or in command of battle ships. Arrangements are made for firing of guns for more than one signaling purpose: They can be used as the blasts of a fog whistle are used to communicate by the telegraphic code. A squadron order in the North Atlantic Squadron was that in times of fog guns might be fired by the flagship when other means of signalling were not available and the meaning of these squadron signals were given, having reference, in the most part, to the sudden stopping of the squadron and the immediate anchoring of each vessel in its place. Those are the uses to which guns are put in signals.

Q. At the time when you saw the boat going from the "Mangrove" to the "Panama," could gun signals fired from the "Mangrove" have been heard on the "Indiana?"

A. I have no doubt that they could, but hearing them would not have been necessary, as they were plainly visible.

Q. What officers on board a battle ship have the particular responsibility for receiving and sending signals?

A. The officer who is so appointed by the captain. It is not a
144 position which is assigned inflexibly by the regulations. On the "Indiana" the first lieutenant of marines was the signal officer, and was usually supplemented by an officer of the grade of ensign or cadet who could stand watch and watch with him. On flagships the officer is always one of the admiral's staff.

Q. What is the rule on board ship in regard to the care taken of the signal flags?

A. They are especially cared for in lockers especially prepared, usually lined with zinc or other means of making them tight, and are never left out when not in use, but are rolled up quickly and put in their pigeon holes in lockers and the tops shut down at once. This is for the purpose of keeping their colors bright and so that the smoke from the furnaces and the dampness will not fade them. This is possible for the reason that these signals are displayed at the masthead but for a moment or two as a rule and are then put away again; they do not hang like the permanent flags of the ship through the day and sometimes night, such as the admiral's flag at the masthead, or the captain's narrow pen'ant, or during the daytime as the national colors, all of which become much stained, discolored, and faded, except special ones, which are kept for Sunday use and decoration of ship.

Cross-examination by BENJAMIN MICUE:

Q. Admiral, when you saw this boat you can not remember whether you used glasses when you first saw it, but that you afterwards looked at it through the ship's glasses? State if I remember correctly.

145 A. The binoculars.

Q. How far can you probably see a boat with the naked eye at sea—a ship's boat?

A. A good eyesight would see it under those conditions—that is, when centered upon that part of the horizon—at a distance of 2½ or 3 miles—three miles more or less; a large cutter with twelve oars, certainly three miles; such a boat as that sent, perhaps 2½.

Q. Well, could you see the people in this boat at all?

A. I saw that there were people in the boat; I do not think that I could have counted them or said how many. There was an indication that there was movement of the boat and that there were people in the boat.

Q. How large did that boat look to you, if you remember, when you were looking at it with the naked eye, at first?

A. I do not know how to answer, because it would look like a big ship if it was ten miles away and look like a very small boat if it was within half a mile. It appeared to me to be a boat not as large as a ship's cutter, but a small boat of the class of a ship's dingy; but as regards its size, that is as near as I can come to it.

Q. I do not mean what the boat looked like, as to the character of the boat, and so on, but how large an object it appeared to be on the water as you could see it there with glasses?

A. At the time I was looking at it I did not—of course you will understand—measure it in my mind, and as you wish me to give it from my memory, I should say that the distance between the "Mangrove"
146 and the prize being a certain length, that this boat perhaps occupied one-fiftieth of the length.

Q. How long did it look, Admiral, on the water, five feet or ten feet or what, or look a speck?

A. Not like a speck.

Q. You stated that you could probably see a boat the size of the boats of the "Mangrove" with the naked eye some 2½ miles. What size glasses were these that you were looking through—what magnifying power?

A. Not of great magnifying power.

Q. How many times did it magnify?

A. I can not give an approximation; I do not know. Their quality is not great magnifying, but rendering more distinct, differing in that way from the long telescope and spyglass by which an object is magnified considerably. I do not know if it is five times or fifty, I have no knowledge of that whatever; that, however, may be ascertained from the Department. I do not know what it is.

Q. If you could see a boat on the water with the naked eye, say 2½ miles, how far would you probably be able to see it with the binocular glasses, would you say?

A. Four; and with a spyglass six; that is a rough estimate; that is my impression; that has, however, some basis of experience to judge by.

Q. Could you distinctly observe objects upon the "Mangrove" during the chase or was it simply the outlines of the ship? Could you see people moving about on the ship or anything of that sort?

147 A. I remember distinctly the shape of the small gun fired, my attention being attracted to that portion of the vessel; I remember distinguishing either that gun or some other object like it, which I supposed to be the gun which was fired.

Q. Well, when you saw the smoke, with your experience with gun firing, coming from the side of the ship like that you would naturally know that a gun was there, would you not?

A. Yes; some object like a gun. I made that a saving clause that I

distinguished something like, or, something that appeared to be the gun; I should say the muzzle and part of the gun, not all of the gun.

Q. You spoke of being able to see the direction that the smoke took from the gun. If you could see anything at all wouldn't you be likely to see the direction of it?

A. Oh, no. At a distance of 8 or 10 miles I should say that it would be impossible to distinguish the direction of the tongue of smoke, it would be blurred with the horizon and the natural mist. I should say it would not be possible. You would see the smoke as a cloud, but not a tongue or jet, and its direction distinctly.

Q. When you speak of "jet" doesn't that carry the idea of fire instead of smoke?

A. There is always some fire visible, but the question that was asked me was about the smoke; there is a moment, an instant, when the gun is fired when the smoke distinctly goes out in a straight line and almost immediately dissipates from that to the vague shape of a cloud,
148 but in an instant it is wind blown, and in the heart of that jet of smoke there is a tongue of flame; it is not generally very plain in broad daylight.

Q. When you first noticed the "Panama" was the "Mangrove" in sight—in signal distance, in your opinion?

A. Yes; I believe at long signal distance. I believe that after that we passed a few ships' lengths to the southward away from her and toward the flagship; that we then turned and went back towards her after signaling the flagship. Whether at any time during that few minutes there was a period when ordinary signals couldn't be read I do not know. There was no period during which some signals couldn't have been perceived.

Q. When you spoke of there having been no time when some signals couldn't have been received, do you have reference to flag signals, that there were times when flag signals could have been read?

A. I believe that they could have been read. I am certain that such signals as the firing of guns which we perceived afterwards would have been plainly perceived at any time.

Q. And do you believe that the flag signals would also?

A. I believe so.

Q. When you spoke of flag signals being seen do you mean merely to have seen the signals or to read them—interpret them?

A. I speak of their being understood; interpreted.

Q. Now, what would you call the distance which under most favorable circumstances flag signals could be read?

A. Under most favorable conditions of light, clearness of atmosphere, and everything, possibly up to eight miles, under favorable circumstances.

149 Q. What would you say "probably?"

A. Somewhere between six and eight miles under favorable conditions.

Q. What are the most favorable circumstances for reading signals?

A. With the sun behind the observer and tolerably low down, with clear conditions of atmosphere. The light as I described it, clear conditions of atmosphere, and not too much wind.

Q. When you say "tolerably low down" what do you mean by that expression?

A. If the sun is shining without any cloud as low down as possible, but if slightly obscured by haze or clouds it should be an hour before setting; these would give the most favorable conditions.

Q. In other words, do you mean as much light as you can get with the sun entirely out of your way as far as its direct rays coming into your eyes go?

A. Something more than that; for if the sun is behind you and is very high, though more light is in the atmosphere the sun does not shine so directly perpendicularly upon the signals as when it is low down, and the best point is where it is low but not so low as to have taken away too much of the diffused light in the atmosphere.

Q. Do you consider that the circumstances would be more favorable with the sun fifteen minutes high than with the sun half to three-quarters of an hour high?

A. The difference would be slight in that case and would depend upon the question whether the sun was shining with any haze
150 obscuring it.

Q. Can you see objects at a distance when the sun gets as low down as the horizon as when there is a clear light?

A. Generally you can not unless it is some object, as the side of a fort or house, or the perpendicular surface of a flag upon which the rays are direct. The difference, however, between fifteen minutes before sunset or half or three-quarters of an hour before sunset is not great, and is probably in favor of half-an-hour high slightly over fifteen minutes.

Q. What were the conditions that afternoon as to the atmosphere?

A. My recollection is that it was favorable above the average, as far as clearness and distinctness of distant objects went—of this I am confident.

Q. How was the wind?

A. Slight; a light breeze, and I believe from the northeast, but the log will show that.

Q. You stated, if I remember correctly, that the log would show whether the sun was above or below the horizon; in what way would the log show that? Do I understand that just at sunset there is an entry made in the log, or was there some special entry made about this capture, or was it simply that the time was noted and by the time you would know when the sun would set?

A. The latter is the case. The log will show the hours when we did certain things, and the almanac for that day will show when the sun set.

Q. You stated when asked if in your opinion you were within
151 signal distance when you saw the boat, and you said, "Yes, within good signal distance." How far do you think you were from the "Panama" and the "Mangrove" at that time?

A. Between three and a half and four miles when the boat passed.

Q. You also stated, if I remember correctly, that the "Mangrove" and the prize were quite distinct about the time of the capture; in what direction were these vessels going?

A. They were, as I remember it, apparently standing.

Q. Well, if you could see them quite distinctly when they were there, apparently standing, you could see them pretty distinctly just before the stop, could you not?

A. Yes, sir.

Q. What direction were they going in, then, just previous to the time they came to the stop?

A. I can't remember when the gun was fired whether the "Mangrove" had turned from her generally northerly direction toward the prize or not.

Q. What direction was she in in reference to the prize?

A. She headed, as we looked at her, a little to the right of the eastward of the prize when she fired the gun. It appeared to us to be to the right or the eastward of the prize.

Q. In what direction was she approaching the prize?

A. At that moment I do not remember; she had been steering in a northerly direction, and whether she had turned at that moment or just before or just after I do not remember.

Q. Was she astern of the prize at all?

A. When she fired the gun she was not astern of her.

152 Q. Had she been astern of her?

A. She had not; they had been approaching each other—not directly, but in a diagonal direction.

Q. Where was the "Indiana" stationed on April 25th with reference to the Cuban coast; how far away was she from the coast, and how much coast line did her station cover for her patrol?

A. She had been relieved from her station and ordered together with some vessels for an expedition to cut telegraphic cables, which was afterwards prohibited by the Secretary of the Navy, and the "Indiana" was then engaged in gathering these vessels, one of which was the "Mangrove," and directing them to proceed to Key West and Tortugas for coal and to prepare for the expedition. I had given, as chief of the expedition, instructions to the "Mangrove," and had then left her and proceeded southward towards the flagship, which was to the southward and nearer to the Cuban coast, the "Indiana" flying the signal to the flagship "Where is the 'Detroit?'" and was then searching for the "Detroit" to give her instructions, and the "Indiana" was then about to proceed to Key West or Tortugas to prepare for this expedition.

Q. How far were you from the Cuban coast at the time that the "Mangrove" came along and got her orders to go to Key West?

A. I have no knowledge.

Q. Were you within sight of the coast?

A. Yes, of the highland of the coast; I was not in sight of the shore line.

Q. Now, was the "New York" to the southward—in which

153 direction was the "Wilmington?"

A. I don't remember; I didn't see the "Wilmington" to know her at that time.

Q. Was the "New York" in sight at that time?

A. In sight of the "Indiana?"

Q. Yes.

A. Yes; a few miles to the southward of us, between us and the Cuban shore.

Q. How far away was she, probably, do you suppose?

A. I can't remember how far she seemed to be away from us, except that she was in sight, and I believe in signal distance.

Q. What direction did the "Mangrove" take when she left the "Indiana?"

A. A general northerly direction, heading in the direction of Key West.

Q. Now, when you turned to the southward to go towards the "New York" with the "Mangrove" headed towards Key West, were you not going further apart from each other all of the time? I don't mean directly opposite directions, but like the opening of a way, were you not going further apart?

A. We were increasing our distance from each other on our respective courses.

Q. Did you continue up to the time that you turned to go after the prize?

A. We stopped when I was confident that the "New York" could read our signal plainly to the effect "Where is the Detroit," as I did not care to approach her farther, as I had no object except to get the
154 information from her as to the whereabouts of the "Detroit" in order that I might go after the "Detroit" and direct her to prepare for the expedition; I stopped the ship when I felt that my signals were plainly visible to the "New York."

Q. Then it was that you turned from the course that you were making towards the prize?

A. I first stopped and did not start towards the prize till a moment or two of signaling was exchanged between the "New York" and myself.

Q. Do you mean that your ship stopped?

A. My recollection is that I stopped the engines, there being no object in going any closer to the "New York," as I knew that the "Detroit" was not near her and we were wasting time and coal by going on.

Q. You say you stopped as soon as the "New York" could plainly read your signals, or you could plainly read the "New York's" signals?

A. As soon as I was sure that she could plainly read my signals "Where is the 'Detroit'?" I stopped my ship, as I recollect.

Q. When was this signal about the "Detroit" given in reference to the time that you parted company with the "Mangrove" when she was going to Key West?

A. My recollection is that we hoisted that signal as soon as we were fairly turned from the "Mangrove" towards the "New York" and had gathered way.

Q. Did the "New York" read your signal at once?

A. She, I suppose, did not, for she did not answer it, but
155 replied by a signal "What is the strange sail to the northward?" nor did I obtain a reply, as I remember it, to that signal, for before obtaining a reply to that signal, the question of the strange sail to the northward seemed to become urgent and I turned and went north after it.

Q. Was this signal to the flagship in reference to the "Detroit" previous to the signals with the flagship enquiring as to this strange vessel, which was the "Panama?"

A. Yes, it was previous to it, and was flying for a period of several

minutes from my ship, and was, I believe, called down by me without any answer when the "New York" signalled me about the strange sail to the northward, which was the "Panama."

Q. Well, from the log it appears as follows: "5.45, flagship to 'Indiana': 'What is character of strange vessel?'" Now, that was subsequent to the signalling about the "Detroit?"

A. Yes, sir; and naturally so, for the signal about the "Detroit" was hoisted very soon, almost immediately, after the "Mangrove" and the "Indiana" separated and the "Indiana" proceeded towards the flagship.

Q. Now, had you turned at that time away from the "New York" towards the "Panama" and the "Mangrove?"

A. When I hoisted the signal for the "Detroit" I had just turned away from the "Mangrove" to the southward and proceeded some distance toward the "New York" with that signal flying, and it was after that signal "Where is the 'Detroit'?" had been flying some time, five or ten minutes, perhaps more, that I received from the "New York" the signal "What is the strange sail to the northward?"

156 Q. You were then going towards the "New York?"

A. I had stopped and was not going towards the "New York" at that moment when I received her signals; after I had arrived within good signal distance of the "New York" I did not go any further, because they could see my signals and there was no object in sailing any closer to her, and so I stopped, as I remember it, and waited for an answer from her; no answer came, but instead the signal, "What is the strange sail to the northward?"

Q. Now, when you stopped as you spoke, how long did you probably stop?

A. How long I stopped before I turned and went back for the "Panama," do you mean?

Q. Yes.

A. I can't remember, but I should say five minutes.

Q. Well, then, at five-fifty, according to the log, the "Indiana" signaled to the flagship this reply to this inquiry, "Merchant vessel;" had you stopped then or had you gone on?

A. I feel confident that we were then stopped and had been.

Q. Then, at 5.52, the flagship signaled to the "Indiana," "What colors does strange vessel carry;" were you still standing there then or had you gone on?

A. I never went on toward the "New York."

Q. I mean had you begun to move?

A. At that signal my recollection is that I had begun to move toward the "Panama." That was the second signal that she made to me; at that second signal I turned and went toward the "Panama."

157 Q. Was the "Mangrove" in sight then?

A. Yes, sir.

Q. Would you say that she was within signal distance by flags then?

A. I believe so, but can not state positively.

Q. Did you go right on then from that time towards the "Panama" and the "Mangrove" till you fired the shot across the bow of the "Panama?"

A. From the time that we turned from the "New York" and headed for

the "Panama" we continued going toward her, but the hour and minute we did it I should have to refer to the log; we did not stop but continued to go northward toward the "Panama" and "Mangrove."

Q. Now, at 6 p. m. the log shows that the "Indiana" signalled to the flagship, "Strange vessel changed course to eastward." I understood you to say in your direct examination in substance that you interpreted this enquiry from the "New York" as a wish of the flagship to have you investigate this vessel; was that correct?

A. I do not remember the words of my evidence, but that is the fact.

Q. Well, Admiral, the "Mangrove" was closer to the "Panama" at that time—a good deal closer—than you were, was she not?

A. Yes, sir.

Q. Well, wouldn't the easiest way to have ascertained what ship the "Panama" was have been to have enquired by signal to the "Mangrove" if she was within signal distance?

A. No, it would have been longer, for at great distances it
158 takes some time, and further there was no doubt in my mind that the flagship regarded the "Mangrove" as not of sufficient force to make sure of the prize—that she did not feel confident.

Q. But she could have told you, could she not, what vessel it was, and if this had not been the "Panama," had been a vessel that you did not want to chase, have avoided the necessity of this chase?

A. No, sir; signalling at this distance when you come near to the limit is always slow; it takes time to make out signals at that distance when you come near the limit, and twilight was approaching; it was then nearly sundown, as I remember, and it was only natural that there should be no attempt at signalling when the vessel was approaching. The "Panama" was approaching in our direction and I think the time taken in signalling would have been unwise.

Q. Would you have had to stop the vessel at all to signal?

A. No; but the time required would be considerable, and so I proceeded to the northward. At the time I had gotten well started it was plain to be seen that we would be on the scene before any signalling would be completed.

Q. You made no attempt then, to signal to the "Mangrove?"

A. No.

Q. Now, as I understand, after the signalling to locate the "Detroit" had ceased, you then came to a standstill and that continued till this signalling from the "New York" ceased. Was it at the time that you signalled the flagship that you couldn't see the colors of this strange vessel, that you turned to go after her?

159 A. It was just about that time, but I believe that the turning was actually done at the second signal received from the flagship with regard to the strange sail. We received, as I remember, two signals asking information; it was at the second signal.

Q. The second signal was this, "'Indiana' to flagship: 'Strange vessel changed course to eastward.'" At 5.52, flagship to you, "What colors does the strange vessel carry;" that was about the time you were turning?

A. Yes; we were turning, or, having turned, began to move northward.

Q. Well, Admiral, if you had been going at, say, 8 knots an hour from then on till 6.45, when the log shows that the "Indiana" signalled to

the "Mangrove" to come within hail, you would have gone eight knots, would you not?

A. No; I should think not. The time required for these heavy ships to turn and gather headway from a position of rest may be, I think was at that time, a period of ten or twelve minutes. I think I have already stated that the heavy ships took some twelve minutes to gather their speed.

Q. Now, how far would you say that the "Panama" and "Mangrove" were away at the time you fired the gun across the bow of the "Panama?"

A. What we call "close aboard," which means practically in the presence of the vessel.

Q. How far would you estimate it?

A. I should think one-quarter to half a mile.

Q. Well, if you were that close, was there any possibility of this
160 vessel getting away from you, that you would need to fire a gun at the "Panama?"

A. Yes; night was coming on and if we had let her get a reasonable distance from us she might have eluded us in the dark; it was an act of precaution which any ship would take.

Q. Well, were not the "Panama" and the "Mangrove" at that time—you say that they were within a quarter to half a mile—were they not coming right on toward the "Indiana?"

A. In that direction.

Q. Was there any movement whatever of the "Panama" to indicate that she was attempting to change her course and avoid the "Indiana," to turn off from her when that gun was fired?

A. There were indications that she might be attempting to go past us. Under such circumstances the effort would not be to turn off but to go close by, which would involve turning around of the "Indiana," which would be a long while, during which she would hope to elude in the darkness.

Q. Were there any suspicious actions whatever upon that ship at that particular time which you noticed?

A. Yes.

Q. What was it?

A. One, the fact that she was under way proceeding on her course with the "Mangrove" some distance astearn; second, that her colors were flying; that she had not given the token of surrender which is customary in all actions in maritime affairs. These evidences were such as could not have been neglected by the "Indiana" without a chance of severe censure in case of accident.

161 Q. Was there anything beyond a possibility that the ship might go by and pass you, and flag flying, which induced you to fire? Was there any particular thing, out of the ordinary, that the ship did?

A. Those are the two things; that she was still going ahead while she should be stopped when she approached the "Indiana," and secondly, that her flag was still flying.

Q. Was there not some order issued by the Navy Department during the war that those vessels should continue to fly their flags till condemned and taken into port?

A. Till they were condemned as prizes, but that had nothing to do with the token of surrender which consists in lowering the flag.

Q. That, as a usual thing, is done when you fire upon the ship and she surrenders, is it not?

A. Yes.

Q. Now, wasn't it customary after the flag was lowered at the time of surrender, and the vessel had submitted, for them to again fly their flag till condemned?

A. Not to hoist them at night; not to hoist them after sundown.

Q. Was it not at 6.45?

A. It was after sundown and the twilight was very rapid there, and at that time it was becoming quite dusk. When the sun sets in those regions, near the equator, the twilight comes on very rapidly.

Q. Do you think, Admiral, that thirty-five minutes before it
162 would become quite dark would be a favorable time to read signals?

A. In the Tropics one of the most favorable times is before this twilight begins, when the sun is just up or below the horizon; the most favorable of times.

Q. If it was so dark at the time of this firing as to make it a suspicious thing for the flag to be carried at night, must it not have been very close to dark half an hour before that time?

A. No; decidedly not. In one of my answers in regard to the probability of the vessel eluding us, if I have the permission, I should add, "what was my opinion and belief, based upon" the circumstances. I have no doubt in my mind that the prize would have been lost if she had once passed us on that occasion. That is my firm belief, and I think based upon reasonable probabilities.

Q. Then was it so dark that if that vessel, within a quarter of a mile of you, had passed by your bow, that she could have escaped the guns of the "Indiana" and gotten away?

A. It is possible. Similar cases have occurred on the Wilmington blockade during the war of the rebellion.

Q. But were not those cases later on in the evening, when it was darker?

A. The cases that occurred. I do not remember the times, but they did get away, and before the vessel could turn they were out of reach of being captured.

Q. But none of these cases that you speak of, Admiral, were
163 within thirty-five minutes after you could read flag signals five or six miles?

A. No; but they would have been if you transferred the scene to the Tropics, where the twilight is so sudden. I have no doubt of that.

Q. When did you first make out the flag of the "Panama," if you remember?

A. I did not personally make it out. I was much engrossed about making sure of the vessel and about the subject of her flag. I took the reports of those who were on the bridge, such as the officer of the deck, the signal quartermaster, and others whose duty it is to look after that.

Q. Did I understand you to say that, to the best of your recollection, the "Mangrove" and "Panama" had just gotten under way when you met them?

A. Such was my impression. I had no means of verifying it absolutely.

Q. They had been in view all of the time, had they not, from the time that they were then lying off till you met them?

A. Yes.

Q. You had that opportunity, did you not, to judge of when the vessel started?

A. I had that opportunity, but it was not a good one.

Q. Admiral, after you fired this shot across the bow of the "Panama," are you certain that you hailed the "Mangrove" to come alongside, or did Captain Everett steam up of his own accord and call out to you?

164 A. I do not remember which passed the first hail.

Q. Do you remember whether you asked him what ship it was that he had?

A. I do not remember. I remember one thing in the conversation was, "I congratulate you," or "We congratulate you."

Q. After the "Panama" started on to the flagship, did you go on with her—your ship?

A. For some distance, but not far, is my recollection. After I placed a strong prize crew on board I did not think it necessary to accompany her close up to the flagship. I do not remember how far I took her, but I turned off myself from her; but the "Indiana's" log book would undoubtedly give that evidence correctly.

Q. As to this shot that you fired, I think you stated just now that you did not yourself make out the flag at all—that you did not notice that at all?

A. I think I said I did not look for it. I could have made it out if I had looked for it. I was engrossed in other matters and took the word of the signalman and officers.

Q. Now, you spoke of gun signalling, as to using guns to make such signals as are made with whistles, adopting the telegraphic code; you have never actually known of that being done, guns being used for that purpose, to spell out words?

A. It is not customary, not as a usual thing.

Q. Have you had occasion to do it?

165 A. I do not remember ever having done it myself. I have heard of it being done; that is all.

Q. Well, these signals that you spoke of, by guns, to call attention to signals, that is merely the firing of a gun to attract attention in that direction, is it not?

A. That is all that is for. But I mention' previously special signals by guns. Those are of use and may be used at any time, and were in use or ready for use at all times in the squadron book during, before, and since the Spanish-American war.

Q. Were those not special signals agreed upon for particular occasions?

A. Yes, sir.

Q. If you fire one gun you know what that means?

A. Those that have a special signification or are understood, executed in a special case, as in the matter of one ship engaging another, or one firing at another as a prize. Those things speak for themselves and are signals which can not be mistaken, as, in this instance, where it was plainly received by us as a signal of what was going on, but was not intentionally communicated to us as a signal by the "Mangrove."

Q. That shot wasn't taken by you as meaning any signal from the "Mangrove" for you to come—you took it as a shot across the bow of that vessel?

A. We took it so, but it gave us the information. It wasn't a signal immediately for us, but it was a signal to our mind—intelligence of what was going on.

166 Q. Do you hold, then, that a vessel is within signal distance, within the ordinary use of that term, as far as you can hear guns fired on the other vessels?

A. For purposes of war, yes; not for purposes of ordinary squadron exercise and ship communication.

Q. Do you understand by signal distance to be the distance at which you can read and understand a signal which is given?

A. Such I believe to be the meaning of signal distance as usually employed; yes. I in no way meant to say that I believed we were within signal distance of the prize because of guns, but that we were in the usual acceptance of the word in signal distance.

Q. What I want to get at is whether you considered the usual acceptation of the term "signal distance" includes any distance at which you can hear a gun fired?

A. No positive answer can be given to that because guns are at times heard eighty to one hundred miles away under rare conditions of atmosphere. But I can answer that very clearly by saying that I regard signal distance as being in the nature of things that distance at which you can perceive the calling of a consort for assistance and to be near enough to be in position to render it within a reasonable time. I believe that when that is brought down to questions of miles it is customary to say that when day signals can be read that that will be the test, but the actual point is whether you can see that vessel and if she is in trouble recognize the fact and go to her assistance.

167 Q. Do you consider that it would be a practical thing in time of war to use guns for making a telegraphic code signal in the same way that whistles are used?

A. With greater difficulty and more slowly than with whistles I believe it can be done.

Q. Is it done, to your knowledge, in any of the navies of the world?

A. I do not know, but I know that provisions are made and are carefully laid down.

Q. Wouldn't there be great danger of confusing such signals with engagements going on? As a practical matter the gun firing would mean nothing more than that something was occurring?

A. It is not so regarded by the navies of the world, or they would not consider the possibility of using it under certain conditions.

Q. Well, the two ships, the "Mangrove" and the "Panama," were standing still at the time that you spoke of the boat being seen on the water. Were not the conditions, as far as the direction of the wind, conditions of atmosphere and so on, equally as good for making out a Spanish ensign that it would have been for reading a signal?

A. No. The ensign, as I have stated, of all ships, and particularly merchantmen, become begrimed with the smoke, especially of steamers, so that the difference is most marked between the color, the distinguishing

quality of the color of the ensign, which is flown all of the time,
168 and the signal flags, which are kept fresh and bright.

Q. I do not mean, Admiral, differences resulting from the difference in the flags themselves, the conditions in which they are kept, and so on, but I mean the surrounding conditions, as I said—the atmosphere and wind. For instance, if the wind would have blown the Spanish ensign in the direction that would have aided or retarded signals it would have done the same thing with the signal flag, would it not, from the "Mangrove?"

A. The wind would have been the same. The position of the signal flags would have been much higher than the ensign, which flies either at the low peak or at the rail, while signals are hoisted to the top of the highest mast and would therefore be plainer to be seen. That is one condition that would be different.

Q. Where was this flag flying?

A. Either at her flagstaff stepped in the rail or at the peak of the gaff just over that point, I do not remember which. As I said before, I gave very little attention to the flag.

Q. Do I understand you to say that it was before this capture that the engines of the "Indiana" had been overhauled?

A. It was before the war was declared that we cured as well as we could without a navy-yard the defect in her boilers.

Q. Then it was after this capture that you had her bottom scraped?

A. It was. The retubing of the boilers gave us no greater speed, but enabled us to go at all. With the tubes defective we could not get underway at all.

169 Q. That work had to be done at a navy-yard?

A. Yes. To effect any greater speed it would have to be done at a navy-yard or by some ship fitted out. Some greater repairs were made some weeks after—after the fight with Cervera at Guantanamo by the "Vulcan."

Q. How long were you in command of the "Indiana?"

A. A little short of three years.

Q. What time did you go to her?

A. January, 1897.

Q. What was the fastest speed that you ever probably got out of the "Indiana" during the war and before these repairs at Guantanamo?

A. The greatest speed to be sustained and continued for several hours about eight and a half knots. On one occasion for a few minutes at the battle of Santiago, nine and a half, but only for a few minutes.

Q. How do you know what her speed was at that time?

A. I judged it by her revolutions. We had no chance to heave the log. I judged it by her revolutions and by the way we kept abreast of the middle of the Spanish column.

Q. I would like you to estimate as near as you can how far you were from the coast of Cuba when you parted company with the "Mangrove."

A. I have nothing to fix it by. My movements had, for several hours, had reference not at all to my station, which was northeast of Havana Harbor, but I had been engaged in business con-
170 nected with the assembling of the vessels for this expedition which I had been directed to command.

Q. I understood you to say that the shore was in sight—that is, the headland?

A. I remember that the highland was in sight, that the coast line was not; the hills of the interior were in sight.

Q. Can't you form some estimate from that fact as to how far you probably were?

A. I can form no satisfactory estimate. I should say we were not over 30 or under 10. I have no way of fixing that at all. Nothing had drawn my attention to the shore that day, and especially the latter part of the day, as I was busy with other matters which had no reference any longer to the blockade.

Q. Do you have any idea how far the "New York" was from the shore at that time?

A. No; I could make a closer estimate of our own distance if I knew that. I know that as little.

Q. She was to the southward and further inshore than you were?

A. Southward means more inshore. Cuba lay just due south of us.

Q. I think you said she was a few miles from you at that time; how far would you probably say that she was from you?

A. I have never formed an estimate; I do not know.

Q. Could you form an estimate of how far away she was, when you were signalling while you were standing still there, about the vessel that was off in the distance—not the "Detroit," the "Panama"?

A. Form an estimate of the "Indiana's" distance from what?

Q. From the flagship.

171 A. I might form some estimate by reference to the "Indiana's" log of what I recalled was the distance where we were when we stopped.

Q. Can you form an idea from your recollection of the appearance of the flagship as you saw her?

A. I could have formed that estimate at the time, but at this lapse of time I can not form a close estimate. I do not remember how far she looked from me at the time, but I have reason to believe that when I stopped she was not over four miles from me. I do not know whether I can say she was not under three; that is as near as I can come to it.

Q. Why, if you were as near as that, why was it that the "New York" couldn't make out your signals about the "Detroit?"

A. She could make it out with ease. The flagship did not always answer signals when for reasons she desired to begin signalling herself, and she was on the point, when she read our signals, of making a signal to us. The flagship takes the seniority on those matters and the other ships must give up her question. She made this one out, but didn't answer it. I have every reason to believe that she made it out, as there could not have been any difficulty at the distance of four miles in reading my signals.

Redirect examination by WILLIAM H. KING:

Q. When you saw the guns fired on the "Mangrove," did you see the flame from them?

A. I have tried to remember, but can not.

172 Q. Had the flag of the "Panama" been hauled down at all up to the time that you fired across her bow?

A. I am confident, from what I have learned, that it had not been hauled down.

Q. Can you state, of your own knowledge and observation, had it remained up from the time when the boat from the "Mangrove" boarded the "Panama" till you fired across her bow?

A. I can state nothing of that except by hearsay.

Q. Will you please state why you can not speak of your personal knowledge in that respect?

A. Because my attention was not directed to the flag, and the common report and statement in the group about me on the bridge was that the flag had not been hauled down at all.

Recross examination by BENJAMIN MICOU:

Q. When you fired across the bow of the "Panama" was the flag hauled down then?

A. Almost immediately; it was so reported to me.

H. C. TAYLOR.

On this 6th day of September, A. D. 1901, in the city and county of Newport and State of Rhode Island, then and there appeared the aforenamed witness, Henry G. Taylor, and made oath that the foregoing thirty-nine pages of testimony by him given, to the best of his knowledge and belief, to be a true and correct statement of the matters questioned therein.

Before me.

[SEAL.]

MAX LEVY,
Notary Public.

173 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
vs.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } #17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," "Indiana," and "Wilmington," appellants,
vs.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } #17930.

STATE OF NEW YORK,
County of Kings, ss:

On this 26th day of August, 1901, personally appeared before me, William J. Leonard, a notary public in and for the aforesaid county and State, and by consent of parties acting as commissioner in the above-mentioned cases, upon the call of the officers and men of the U. S. S. "Indiana," George L. Mallery and Charles Perkins, who were first by me duly sworn to tell the truth, the whole truth, and nothing but the truth, and were thereupon examined by William B. King, esq., for the officers and men of the U. S. S. "Indiana," and by Benjamin Micou,

esq., for officers and men of the U. S. S. "Mangrove," and the questions to said witnesses and their answers were thereupon duly taken down in shorthand by Albert M. Eberly, a disinterested amanuensis, agreed upon by the counsel aforesaid, and by him reduced to writing, and
174 thereafter said depositions so reduced to writing were read over by the said witnesses and subscribed in my presence.

GEORGE L. MALLERY, being sworn, questions were propounded to him by William B. King as follows:

1. Question. Please state your name, age, and occupation.
Answer. George L. Mallery; age, 30 years; gunner, U. S. Navy.
2. Question. How long have you been in the Navy?
Answer. Since the 24th of May, 1889.
3. Question. What grades have you held during that time?
Answer. Almost every grade from apprentice boy to gunner.
4. Question. How long have you been gunner?
Answer. Six years in March.
5. Question. Did you ever serve on the "Indiana?"
Answer. Yes, sir.
6. Question. What were the dates of your service on that vessel and what grades did you hold?
Answer. I went to her, I think it was the 25th of March, 1897, and I left her on the 27th of May, 1899. I served as gunner.
7. Question. Have you been gunner at this navy-yard since your detachment from the "Indiana."
Answer. Not all the time. I have with the exception of about four months.
175 8. Question. I would like to have you state in a general way what the duties of gunner at this navy-yard are.
Answer. Well, the gunner at this navy-yard is first assistant to the inspector of ordnance—practically his executive officer in the department. He has charge of all the men, shipments, care and preservation of ordnance material on vessels in the yard. All floating appliances, derricks, tugs, trucks, and in fact general supervision of the working portion of the department.
9. Question. Please state whether you were on deck during the chase and capture of the Spanish steamer "Panama."
Answer. I was not on deck all the time. I was on deck to see the capture of the "Panama" by the "Mangrove."
10. Question. Please state what the condition and relation of the "Mangrove" and "Panama" were when you first came on deck.
Answer. I should think they were about one-half mile apart.
11. Question. How long did you either hear or see any gun or guns fired?
Answer. Shortly after I came on deck I saw a gun fired from the "Mangrove."
12. Question. Will you please state exactly, in detail, what you saw of that gun fire?
Answer. Well, I saw the smoke of the gun, saw the flash of the gun, and a short time afterwards I saw the "Mangrove" come closer
176 to the "Panama" and lower a boat; saw the boat in the water

going toward the "Panama." It seemed to me that the "Mangrove" came closer.

13. Question. Please state just what was the appearance of the smoke you saw.

Answer. Well, I saw the ordinary puff of smoke which gushes from the muzzle of a gun when a gun is fired. I also saw the flash which always follows.

14. Question. Did you hear the report of the gun?

Answer. I am not exactly clear in my mind on that point now.

15. Question. Did you see anything more than one gun fire?

Answer. I did not.

16. Question. I would like to have you state exactly what you saw in relation to the lowering and passage of the boat.

Answer. I did not see the boat lowered. I saw the boat in the water about midway between the two ships.

17. Question. Can you give an idea of what the boat looked like at this distance, and whether you could see anything of individuals in the boat?

Answer. I could not distinguish individuals. I knew it was a boat because I could see it going up and down.

18. Question. Did you see this gun flash and smoke with the naked eye or with a glass?

Answer. With the naked eye.

19. Question. Did you have a glass?

Answer. No.

20. Question. Why didn't you use a glass?

177 Answer. Because it was not my business to use a glass. They were all in use on the bridge.

21. Question. In your affidavit made on the 2d of February, 1901, it is stated as follows: "That he saw these things through a glass from the deck of the Indiana." Can you say how you came to say that in the affidavit?

Answer. That is wrong. I am not quite sure about the matter now, as it occurred so long ago, but I and almost positive that when I say I used a glass I must have made a mistake. Perhaps I may be mistaken about this, but I think not. Capt. Waller was up there with a glass and I might have used it, but I can not say. He kept it himself most of the time.

22. Question. Can you state positively whether you saw the gun fire and the boat without a glass?

Answer. Well, I think I can. I am pretty positive that when I say I used a glass I must have made a mistake. Waller had a glass, but whether I used it or not I can not say.

23. Question. Do you know whether you saw these things independently of the use of the glass, or whether you saw them only with the glass?

Answer. Well, as I say, I am not sure. I can not say whether I used his glass or not, but my impression is that I did not.

24. Question. What was the condition of the light at that time?

Answer. It was very good. Clear.

178 25. Question. Please state whether at the time when you saw

this boat in the water the "Mangrove" and the "Panama" went within signalling distance of the "Indiana."

Answer. Yes, sir.

26. Question. What do you mean by signalling distance?

(Mr. Micou objects to this question unless the witness is qualified as to the use of signals.)

Answer. I mean by signalling distance the distance by which any two ships can communicate with each other by any means they may have on board.

27. Question. What means could have been used at this hour and distance for communication between the "Mangrove" and the "Panama?"

Answer. They could have used gun signals, and I think flag signals.

28. Question. Have you had any experience in reading signals yourself?

Answer. Yes, a great deal. I was chief signalman of the squadron of evolution for about three years.

29. Question. Did you make any tests then of the distance at which flag signals could be read?

Answer. I never made any special test, but I have read them at long distances.

30. Question. What would you estimate to have been the distance at this time between the "Mangrove" and "Indiana?"

Answer. I should say about 4 or 4½ miles.

179 31. Question. On what do you base that estimate of distance?

Answer. Well, simply from my knowledge of distances at sea.

32. Question. What could you see of the "Mangrove" at that time?

Answer. Well, I could see her masts, smoke pipe, and upper works very clearly; smoke from her stack.

33. Question. Was the "Indiana" at the time when you saw the boat moving toward the "Mangrove" and "Panama?"

Answer. Yes, sir.

34. Question. Did she continue to move towards them until the "Indiana" fired the gun?

Answer. Yes, sir.

35. Question. I would like to have you state whether during that time the "Mangrove" and the "Panama" were in plain sight.

Answer. Yes, to me.

36. Question. Do you know of any reason why the "Mangrove" should not have seen the "Indiana" at the time when you could see the "Mangrove" from the deck of the "Indiana?"

Answer. No, sir; I do not.

Cross-examination by Mr. MICOU:

1. Cross-question. How long before the time that you speak of seeing the gun fired did you come on deck?

Answer. A very few minutes. A very short time. It was a little before six o'clock.

2. Cross-question. Were you on deck when the "Mangrove"

180 came alongside the "Indiana" to get the mail?

Answer. No; I was not.

3. Cross-question. Were you on some duty below deck?

Answer. At the time, just before I came up on deck, I was down there having my supper, and I heard the word passed along that there was a chase, and I came up on deck to see what was going on.

4. Cross-question. Did the ship stop at all shortly before you came on deck?

Answer. That I could not say. I do not remember.

5. Cross-question. Would you not notice a ship coming to a standstill?

Answer. I would, but I would not retain it in my memory for this length of time. I have nothing to connect the fact with.

6. Cross-question. You only saw the smoke of one gun?

Answer. Yes, sir.

7. Cross-question. This boat that you saw, was it moving in the water?

Answer. You could not determine at that time whether it was moving or not.

8. Cross-question. How large did it look?

Answer. It did not look very large. It looked like a small speck on the water. What caused me to look and see, I think, was a remark from the bridge.

9. Cross-question. You say it looked like a speck on the water?

181 Answer. Yes; a good-sized speck.

10. Cross-question. If it had not finally developed into a boat and subsequent events that came to your knowledge of the "Mangrove" sending a boat over to the "Panama," would you have been positive that that was a boat?

Answer. I could not have sworn that it was a boat, but all things pointed and indicated that it was a boat, so I assumed that it was.

11. Cross-question. How long did the two ships appear to stand still there—the "Panama" and "Mangrove?"

Answer. I should say about twenty minutes; perhaps a little longer. I base that on the fact that it would take that long to lower a boat and send it over there.

12. Cross-question. Did you continue on deck up to the time that the shot was fired across the "Panama" from the "Indiana?"

Answer. Yes, sir.

13. Cross-question. Did you see these vessels get underway and start towards the "Indiana?"

Answer. I saw them coming towards the "Indiana," the "Panama" on the port quarter. I think the captain of the "Indiana" thought that perhaps the "Panama" had not completed surrender.

14. Cross-question. What was the condition of light at the time that the shot was fired from the "Indiana."

Answer. It was commencing then to grow a little dusk.

182 15. Cross-question. How near was the "Panama" when the shot was fired?

Answer. I should say about 5 or 6 hundred yards—very close.

16. Cross-question. Was the "Panama" coming on towards the "Indiana?"

Answer. Yes.

17. Cross-question. Was it so dark that if the "Panama" had passed the bow of the "Indiana" she could probably have gotten away before the "Indiana" could have stopped her?

Answer. No, indeed. It was simply growing dusk. The day was simply dying, is the way to describe it.

18. Cross-question. You spoke of gun signals. Are they not special signals that are agreed upon for particular occasions?

Answer. They are in times of peace, but we had a code of signals during the war. We had no occasion to use it, however.

19. Cross-question. Have you ever known it to be used?

Answer. Well, yes; I have known it to be used in anchoring squadron in thick weather.

20. Cross-question. Well, you read those signals by the sound, not by the flash from the gun?

Answer. It depends upon the weather. In thick or heavy weather you would have to depend upon the sound. At other times by the flash.

183 21. Cross-question. What were those gun signals that you speak of that had been used during the war?

Answer. I do not know the code. Each ship was equipped with it. So many guns means such a thing, so many guns at such and such intervals.

22. Cross-question. You mean the signal code through use of guns for making signals is the same as signals made by the use of whistles?

Answer. They use what is known as the Morse system with whistles, the same as in telegraphy. It would be impossible to use a telegraph system with guns. I do not think the code was gotten up for that purpose in time of action.

23. Cross-question. Were not these guns signals that you speak of merely agreements made for special occasions, or was there a fixed code, for instance, one gun meant this, two guns meant something else, etc.?

Answer. There was a fixed code. I think if you will look up the signal records you will find that is the case.

24. Cross-question. What did one gun mean?

Answer. I can not tell you; that was not generally known, the same as with the General Signal Book. I could not tell you what No. 1 flag meant without referring to the book. Light signals are different. You can read them.

25. Cross-question. Do you consider that ships are within signalling distance just as far as a gun can be heard from one ship to another?

184 Answer. Yes; because for instance in the merchant service they can fire a distress signal as far as it can be heard.

26. Cross-question. Now you are familiar with flag signals. How far do you consider is the longest distance at which, under the most favorable circumstances, you can read flag signals?

Answer. I should think about five miles. I base that on signals that were made when I was in the service. We had a boat race up at Bar Harbor, and the course was staked off for five miles, and from our ship we read the signals at that distance.

27. Cross-question. That is as far as you have read signals?

Answer. I may have read them farther than that, but that is the only thing I have accurate knowledge of. I have read signals when you could not see the ship—you could just see her masts. You could just see the masts with the naked eye, and I read the signals with a glass.

28. Cross-question. You saw this chase, did you not, before the ships came to a standstill, the "Panama" and the "Mangrove?"

Answer. I think they were going; I do not know.

29. Cross-question. When that gun was fired, she was not standing still?

Answer. She was moving.

30. Cross-question. In what direction was the "Mangrove" moving as regards the "Panama?"

185 Answer. She was moving towards her.

31. Cross-question. Was she astern of her?

Answer. She was a little on her bow. These things get indistinct in a person's mind after three years.

32. Cross-question. If you could see this boat you could see these ships plainly, could you not?

Answer. I could see the ships plainly, but their relative positions I would not like to state positively.

33. Cross-question. In watching a chase between vessels, or one vessel chasing another, would it not be natural to remember something about general directions?

Answer. Yes, I think so.

34. Was the "Mangrove" between you and the "Panama?"

Answer. Yes.

35. Cross-question. From which side of the ship did you see this gun fired?

Answer. Port side, I think.

36. Cross-question. Would that be the other side from the "Indiana?"

Answer. No. Let me show this by a diagram.

(Witness here makes diagram, and counsel for the "Indiana" now offers this diagram in evidence, marked "Exhibit A.")

Those positions are only approximate. I would not stand by them as exact.

37. Cross-question. At what time does that diagram show the positions of the vessels, when the gun was fired?

186 Answer. When the gun was fired.

38. Cross-question. When the "Mangrove" was lying off the "Panama," at the time that you say that you saw the boat, was the "Mangrove" on the same side of the "Panama" as she is shown to be in this diagram?

Answer. I think she was.

39. Cross-question. Is your recollection distinct about these vessels, and the way they were moving?

Answer. It is generally so. I would not state positively, or I would not say that that is absolutely correct; that is my recollection of things.

40. Cross-question. Did you see flag on the "Panama?"

Answer. I did not notice it; I did not look to see it. It never occurred to me that there would be any question about signalling distance.

41. Cross-question. When you saw two ships, one apparently chasing the other, would it not be natural to look and see whether the ship that was being chased carried flag of the enemy's country?

Answer. Well, yes. We thought that was the "Panama" because we received information that she would be there just about that time.

42. Cross-question. When did you first make out the flag of the "Panama?"

Answer. I did not look at the flag until they hauled it down.

187 I heard remarks about the flag flying a long time, but I did not notice it.

43. Cross-question. Could you make out the flag distinctly when they hauled it down?

Answer. Yes.

44. Cross-question. It was not too dark for that?

Answer. No.

45. Cross-question. Do you remember making out the colors at all before she hauled them down?

Answer. I do not.

46. Cross-question. You say you came up from your supper when you heard this chase was on. Did you go right on duty, or were you just on the deck watching chase?

Answer. I was on duty all the time, but at that particular time I was just watching the chase. The captain told me to load a gun.

47. Cross-question. Did you fire the gun?

Answer. No.

GEORGE L. MALLEOY,
Gunner, U. S. Navy.

STATE OF NEW YORK,
County of Kings, ss:

Sworn to and subscribed before me this 28th day of August, A. D. 1901.

[SEAL.]

WILLIAM J. LEONARD,
Notary Public # 25.

188 CHARLES PERKINS, having been produced as a witness, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and thereupon deposes and testifies as follows:

By Mr. KING:

1. Question. State your name, residence, and occupation.

Answer. Charles Perkins; residence, #1706 3rd ave., New York City; occupation, sailmaker's mate.

2. Question. What is your age?

Answer. Forty-two years.

3. Question. How long have you been in the Navy?

Answer. I joined the Navy on the first day of July, 1887.

4. Question. Did you serve on the "Indiana" during the Spanish-American War?

Answer. Yes, sir.

5. Question. What grade had you?

Answer. I was captain of the hold.

6. Question. Do you remember the capture of the "Panama" on the 25th of April, 1898?

Answer. Yes, sir.

7. Question. Were you on deck at any time that afternoon when the chase of the "Panama" was going on?

Answer. Yes, sir.

189 8. Question. Tell me what you saw of the chase of the "Panama" that afternoon.

Answer. We were with the "Mangrove" all the afternoon, and then after we left her we steamed back to her to give her assistance with the "Panama." She lowered a boat, I could not say exactly what time it was, but I did not see the shots fired.

9. Question. You speak of her having lowered a boat. Did you see that?

Answer. Yes; I saw the boat.

10. Question. Tell me just what you saw.

Answer. Well, I saw the boat lowered, and saw she had men in her, but I do not know how many.

11. Question. Did you see that with a spy glass or with your own eye?

Answer. I had my own glasses.

12. Question. What were they?

Answer. Binoculars.

13. Q. At that time was the "Indiana" going towards the "Panama?"

Answer. Yes, sir.

14. Question. How dark was it?

Answer. It was daylight. When we lowered our boat and went alogside of her it was getting dark.

15. Question. From the time when you saw the boat in the water up to the time when you came up to the "Mangrove," please state whether you could see the "Mangrove" and the "Panama?"

Answer. Yes, sir; we could do that.

190 16. Question. While you have been in the Navy have you seen signals made between different vessels?

Answer. Yes, sir.

17. Question. How often have you seen this done?

Answer. Sometimes I was there myself helping them, hoisting signals. I have been quartermaster at times.

18. Question. Besides the times when you have helped, have you seen signals made from one vessel to another?

Answer. Yes, sir.

19. Question. How often have you seen them?

Answer. Quite often. I have seen it during the war.

20. Question. When you saw the "Mangrove's" boat in the water, can you say whether you could have seen signal flags on the "Mangrove" clearly enough to tell one flag from another?

Answer. Not with the naked eye, but with glasses.

Cross-examination by Mr. MICOU:

1. Cross-question. How long did you stay on deck?

Answer. I was almost the whole day on deck; all the afternoon until late at night.

2. Cross-question. Were you there when the "Indiana" fired the shot?

Answer. Yes, sir; I was on deck.

3. Cross-question. How near was the "Panama" then?

Answer. I should judge about 2,000 yards.

4. Cross-question. What time of day was that?

Answer. It was light.

5. Cross-question. Light enough to see her plainly?

191 Answer. Yes, sir.

6. Cross-question. Could you see her flag?

Answer. Yes, sir.

7. Cross-question. Could you make it out?

Answer. Yes, sir.

8. Cross-question. Could you see the "Panama's" flag at the time you say you saw the boat in the water?

Answer. No; I did not take notice of the "Panama's" flag, but when the shot was fired we saw the flag.

9. Cross-question. Could you see much of the "Panama" and the "Mangrove" at the time you speak of seeing the boat in the water, except smoke?

Answer. We were quite a ways off, but we could make them out with the glasses.

10. Cross-question. What did this boat look like on the water?

Answer. A whaleboat.

11. Cross-question. How big did it look?

Answer. It looked small.

12. Cross-question. How small?

Answer. Water is deceiving; but it looked like a small object.

13. Cross-question. Would you have known that that was a boat if you had not afterwards learned that there was a boat sent out from the "Panama?"

Answer. Not first off, but afterwards we saw that it was a boat, because it was moving towards us.

192 14. Cross-question. How long did you watch her?

Answer. I watched her until she got alongside of us.

15. Cross-question. About how long did it take for you to meet the "Panama" and "Mangrove?"

Answer. I should say about half an hour.

16. Cross-question. Did you see the "Mangrove" and "Panama" get underway and start towards you?

Answer. I do not know if they stopped at all.

17. Cross-question. You could not tell whether they stopped or not?

Answer. I could not.

18. Cross-question. Was this boat that you saw stopped?

Answer. She was going right along.

19. Cross-question. Did you see it coming over and going back?

Answer. I did not watch her going back.

20. Cross-question. How far off would you say that you were at that time?

Answer. Well, I should say about a couple of miles.

21. Cross-question. That is when you saw the boat, do you mean?

Answer. We were nearer when we saw the boat, I should say about 20 minutes steaming.

22. Cross-question. How much in miles?

Answer. I should say about one and one-half miles.

23. Cross-question. If you were one and one-half miles from the "Mangrove" at the time of the capture, the "Indiana" ought to be plainly in sight from the "Mangrove," ought she not?

193 Answer. She was.

24. Cross-question. She is a great deal larger ship than the "Mangrove," is she not?

Answer. Yes, sir.

25. Cross-question. What were your duties up on deck that day?

Answer. Nothing.

26. Cross-question. How is it that you did not have any duties?

Answer. My duties were down in the hold, but I did not have anything to do at that time.

27. Cross-question. I thought you were up on deck all that time?

Answer. I was. My actual duties were down in the hold, but when I did not have anything to do I was up on deck. I had charge of the rope, water, etc.

28. Cross-question. You speak of having hoisted flags to make signals You never read signals on board ship, did you?

Answer. I can read signals.

29. Cross-question. That is, you mean you can tell red flags from blue flags, etc.?

Answer. I know the numbers, but I do not know the meaning of them. You must look on the general signal book to find out the meaning.

30. Cross-question. What I mean is, have you ever had anything to do with the reading of these flags yourself, except just putting the flags up, bringing them down, etc.?

194 Answer. It was not my duty. We are supposed to know the flags, but do not know the meaning of them.

31. Cross-question. How high was the sun when all this occurred?

Answer. The sun was pretty high up.

32. Cross-question. How high—an hour, probably, before dark?

Answer. Yes; I think it was about an hour.

33. Cross-question. How high was the sun when the "Panama" came along, when you fired the shot?

Answer. The sun was down then.

Redirect examination by Mr. KING:

1. Redirect question. If the sun was down when you fired the shot, please state how it could have been an hour up when you saw the boat in the water.

Answer. Well, the sun was pretty high when the boat was lowered. I do not think it was an hour.

2. Redirect question. When you saw the boat in the water, what could you see of the "Mangrove?"

Answer. I could see her plainly.

3. Redirect question. Tell me how much of her you could see.

Answer. I could see the whole of her.

4. Redirect question. Now, you say that you saw that the boat was moving, but you could not see whether the "Mangrove" and "Panama" had stopped. Please explain how that is, that you could see that the boat was moving, but you could not see whether the "Mangrove" and "Panama" had stopped.

195 Answer. Well, from where I was and from the distance between them, I saw that the boat was moving towards the "Panama." The "Panama" was on this side [pointing to the left] and the "Mangrove" on this side [pointing to the right].

5. Redirect question. Why could you not tell also whether the "Mangrove" and "Panama" were moving?

Answer. Because they were coming towards us.

Recross-examination by Mr. MICOU:

1. Recross-question. What did that boat look like in the water; how big?

Answer. She looked like a small object on the water.

2. Recross-question. What color did it look like?

Answer. We could not see the color at that time, because we only seen a black spot on the water. We only seen the men.

3. Recross-question. Was it not simply because there seemed to be something moving that you thought it was a boat?

Answer. Yes, sir.

4. Recross-question. Would you have ever been absolutely certain that that was a boat if it had not come up afterwards and you found boat had passed from the "Panama" to the "Mangrove?"

Answer. Yes, sir.

5. Recross-question. You would have been sure of it?

Answer. Yes, sir.

6. Recross-examination. When did you first hear that a boat had passed from the "Mangrove" to the "Panama?"

196 Answer. I was right on deck, and the men were all talking about it, and the quartermaster was the first to report it that a boat was going towards the "Panama." Then we all looked, and I went down in the hold and got my glasses and looked at it. It was a small object on the water. Of course I could not see the color of the boat.

CHARLES PERKINS.

STATE OF NEW YORK, *County of Kings, ss:*

Sworn to and subscribed before me this 27th day of August, A. D. 1901.

[SEAL.] WILLIAM J. LEONARD,
Notary Public, No. 25.

197 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U.S. S. "New York," "Indiana," and "Wilmington," appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

STATE OF NEW YORK, *County of Kings, ss:*

On this 24th day of October, 1901, personally appeared before me, William J. Leonard, a notary public in and for the aforesaid county and

State, and by consent of parties acting as commissioner in the above-mentioned cases, upon the call of the officers and men of the U. S. S. "Indiana," Charles E. Murray, who was first by me duly sworn to tell the truth, the whole truth, and nothing but the truth, and was thereupon examined by William B. King, esq., for the officers and men of the U. S. S. "Indiana," and by Benjamin Micou, esq., for the officers and men of the U. S. S. "Mangrove," and the questions to said witness and his answers were thereupon duly taken down in shorthand by Albert M. Eberly, a disinterested amanuensis, agreed upon by the counsel aforesaid, and by him reduced to writing, and thereafter said deposition so reduced was read over by the said witness and subscribed in my presence.

[SEAL.] WILLIAM J. LEONARD,
Notary Public.

1. Question. State your name, age, and occupation.

Answer. Charles E. Murray; age, 38; chief yeoman, U. S. Navy.

2. Question. How long have you been in the naval service?

Answer. About seven and one-half years.

3. Question. Before that were you in the military service?

Answer. Yes; in the U. S. Army.

4. Question. How long?

Answer. Five years in the Regular Army.

5. Question. What vessel were you on, and what position did you hold, on April 25, 1898?

Answer. The U. S. battle ship "Indiana," and my position was chief yeoman.

6. Question. What were the duties of chief yeoman on that vessel?

Answer. My duties were that of caterer to the general mess, or to the entire crew outside of the commissioned and warrant officers, and chief petty officers.

7. Question. What vessel were you on on the afternoon of April 25, 1898?

Answer. The "Mangrove," a light-house tender.

8. Question. Please state under what circumstances you were on that vessel.

Answer. I was ordered by Captain Taylor, of the "Indiana," to take passage on the "Mangrove" for Key West, to purchase such stores, as I had already received verbal orders from the pay department of the ship, and in about three days to meet the ship off Key West with the
199 stores. The "Indiana" would proceed to Dry Tortugas for coal, and in about three days she would lie off Key West long enough for me to put these stores on board.

9. Question. Did you see the Spanish steamer "Panama" that afternoon?

Answer. Yes, sir.

10. Question. Please state the circumstances under which you first saw her and what occurred.

Answer. I was leaning on a very large machine that they had on the forecastle, smoking, and a gentleman who had the deck (I did not know his name at the time, but found out later) called me up on the bridge, a

distance possibly of ten or fifteen feet, and handed me the glasses, and asked me to look through them and see what I could make out of a steamer that we could see coming up; we could see possibly one-half of her smokestack. I did so, saying that it was a steamer I was not familiar with; that I could not make her out; could not see her flag, and he called one of the men and sent down in the ward room, stating the facts of the case that there was a steamer standing to the westward. The captain sent word back "all right," so we still headed on in the course we had taken towards Key West, and we got a better view of her, and we looked through the glasses again, and Mr. Cosgrove remarked that possibly she might be the "Panama," and I said "No, I do not think so. The last time I saw the "Panama" she was square-rigged on the foremast." To the best of my knowledge this ship was not so rigged. He again sent a messenger into Captain Everett saying this ship was now almost
200 in plain sight, but he could not make out her colors. Captain Everett then came on deck, looked through the glasses and ordered us to change her course towards her; and when we got within distance, so we could notice her colors, Capt. Everett said "that is the Panama." I then was very much in doubt that it was, and when we got close enough to her so we could see, of course then there was no doubt that it was the "Panama." In the meantime the captain gave orders for ammunition for the two 6-pdr. guns, and a cadet, whom I did not know then but afterwards found out was Mr. Dayton, came forward and gave orders to get up ammunition, and the crew seemed to me to be not very much under control; they were light-house tender men with very little military training, and in the meantime some of them asked for pencil and paper, asking how much prize money they were going to get, etc. In the meantime the captain gave orders to hurry the ammunition, and Mr. Everett gave orders to Mr. Dayton to fire, but not to hit the ship. Then we were distant, I should say, 2,000 yards possibly 2,500, and he fired and made a very good line shot but short. Mr. Everett gave orders to fire again, and he did fire and fired an excellent shot across her bow, which I should say was very close, and we were so close then that we could see people on board—men and ladies running around her decks. The ships seemed to be headed right towards one another. The ships seemed to be headed right towards one another, but a little of an angle, and at one time I thought the "Panama" was going to ram us, and Captain Everett gave orders to load both guns and stand by,
201 and I jumped to the starboard gun and loaded the starboard gun, and the starboard gun was afterwards fired by—I think Mr. Dayton; I am not positive. We were then very close, and each one of them put their helms over; we passed within 75 to 100 yards of one another. Captain Everett shouted to the "Panama" people that if they did not stop her engines he would fire into her. We then put our helm over and ran a little astern of her, and a small boat on the port side was called away and was manned by the "Mangrove," and Mr. Dayton was ordered to proceed on board and take charge. He did so and when he got on board he spoke through his megaphone, stating that the ship was the "Panama," bound from New York to Havana with a very large cargo on board, with a number of passengers including several ladies. He went on to give the captain's name, and the time that he left New

York, and Captain Everett then gave him orders to head for the "Indiana," and also stating that he should inform the captain of the "Panama" that if he made any move to deviate from the course that was set by Mr. Dayton, or any move to get away from us, that he would fire into him, and ordered the "Panama" to proceed ahead, and it went in that position until it came up with the "Indiana."

11. Question. Did you take anything further in regard to the conversation by megaphone between Commander Everett and Mr. Dayton?

Answer. No, sir. There was quite a little conversation passed between them. I know the ladies were very much scared, and were afraid the "Mangrove" was going to fire into them, and that he had noticed
202 two guns on her forecastle, but they were covered by canvass, and he did not know whether they were defective or whether they were complete or not, and that at that time had assured the captain that we would not fire into him and would not endanger the lives of his passengers, etc., that he had on board, and that everything seemed to be in a kind of a "hub hub," stating nobody seemed to know who was responsible, etc. Captain Everett asked him why it was that the engines had not stopped when the shots were fired, and he said that the signals were misunderstood in the engine room, and Captain Everett gave him orders that he should inform the captain that if they tried to get away or out of range of the guns that he would fire into him.

12. Question. Will you please state how long, in your opinion, the time was from Mr. Dayton's arrival on the "Panama" until the "Mangrove" and "Panama" proceeded ahead toward the "Indiana?"

Answer. Fifteen to twenty minutes.

13. Question. Please state whether you saw the "Indiana" at any time from the time when you sighted the "Panama" until you turned toward the "Indiana."

Answer. She was almost, I should say wholly, within signalling distance, with a good observer, and if the wind would have been favorable, if the wind would have been on either quarter so that the flags would have shown out, she would have been within signalling distance. I had a conversation with Chaplain Cassard before there was a shot fired from the "Mangrove." Chaplain Cassard was standing on the bridge right within one or two feet of me and he asked me the question
203 whether I thought that was the "Panama," and I said I was very much in doubt, as I had seen the "Panama" on several occasions and to the best of my knowledge was square-rigged. Well, he said, if this is the "Panama" she is a very rich haul, because all the ships have been notified that the "Panama" has left New York, and she is going to try and run the blockade; the admiral has issued verbal orders to be on the look out for the "Panama," and he says we will be "in it." He says one way or the other we will be "in it," either as passengers on the "Mangrove" or being on the "Indiana," one or both, and in our conversation we had noticed, and we had remarked one to another, the amount of smoke she was making, and concluded that her people were making extraordinary efforts to keep up with us.

14. Question. At the time when Ensign Dayton went on board the "Panama" was the "Indiana" any nearer to you than when you first saw her?

Answer. Yes, sir.

15. Question. At that particular time when Ensign Dayton went on board the "Panama" can you state whether the "Indiana" was within signalling?

Answer. She was within signalling distance—could have signalled one another without any trouble.

16. Question. What means of signalling could you have used without any trouble?

Answer. I should say the Ardois system. The coast of Cuba is very high and would have gave them an excellent background
204 for the Ardois signalling, or they could have used the wigwag system by using the crane; that was our general mode of signalling on the "Indiana."

17. Question. Could the "Mangrove" have signalled to the "Indiana" to get her aid if the "Mangrove" had so desired?

Answer. Very easily.

18. By what means?

Answer. I think she only had one means, which was the wigwag. I do not think that she carried the Ardois; or she could have signalled by the common navy flags. She was more to the westward than the "Indiana" and more in the light than the "Indiana." Our signals could have been more readily read than the "Indiana's."

19. Question. In the deposition of Mate P. L. Cosgrove, on page 35 of the record in this case, he says: "Chief Yeoman Murray of the 'Indiana,' who had taken passage on the 'Mangrove' to Key West, also remarked to me later that the 'Indiana' was out of signalling distance and would not share the prize." Please state whether that is correct?

Answer. No, sir.

20. Question. State what conversation you had, if any, with Mate Cosgrove.

Answer. The only conversation that I had with Mr. Cosgrove to my knowledge was in the beginning of the affair, in regards to him calling me on the bridge and handing me the glasses and asking me if I could make out the flag of this ship; and as I said before, on two occa-
205 sions I looked through the glasses and both times I was unable, and so was he, to make out the flag of the ship. After that I had no conversation with Mr. Cosgrove, because the next day I left the ship as soon as we arrived in Key West, and have never seen him since to my knowledge.

21. Question. Will you please state whether or not you ever made any such statement, or any statement substantially in effect like this, either to him or anyone else.

Answer. I have not.

22. Question. When the "Mangrove" sent Ensign Dayton on board the "Panama" was the "Panama" within range of the "Indiana's" guns?

Answer. She was within range of her larger guns. I should say the distance was 4 to 6 miles.

Cross-examination by Mr. MICOU:

1. Cross-question. Where were you most of the time from the time that the "Panama" was sighted, when these messages that you speak of

were sent to Commander Everett, and the time that Ensign Dayton landed on the deck of the "Panama."

Answer. I was standing just underneath of the chart house, within a distance of 10 feet I should say.

2. Cross-question. Who were the messages that you speak of as having been sent from the deck to Captain Everett and back from Captain Everett to the deck sent by?

Answer. Mr. Cosgrove, who had the deck.

3. Cross-question. Where was Captain Everett at that time?

Answer. He was, I should say, in the wardroom.

206 4. Cross-question. After Captain Everett came out on deck, where was he then?

Answer. On the bridge.

5. Cross-question. Was he there continuously up to the time that Mr. Dayton went on board the "Panama"?

Answer. He was.

6. Cross-question. Were you continuously during that time within a few feet of the bridge?

Answer. I was within a distance of ordinary conversation.

7. Cross-question. How long was it after the "Mangrove" had left the "Indiana" after taking on mail before the "Panama" was sighted?

Answer. I should say forty-five minutes to an hour, to the best of my knowledge.

8. Cross-question. What course did the "Mangrove" take when she left the "Indiana."

Answer. A northeast course towards Key West.

9. Cross-question. What direction was that course in connection with the flagship "New York"? Was it going away from the "New York"?

Answer. To the best of my knowledge the flagship was near Matanzas. I do not recollect of seeing the flagship earlier or later than 3 or 4 o'clock; then I think that she was going to the eastward, in the direction of Matanzas.

(This testimony is objected to as immaterial, as this testimony is offered on behalf of the "Indiana" and not on behalf of the "New York.")

207 10. Cross-question. Was the "Mangrove" up to the time that the "Panama" was sighted going in a general direction away from the "New York?"

Answer. Yes, sir; in a general direction.

11. Cross-question. Then if the "Indiana" after the "Mangrove" left her had steamed towards the "New York," the "Mangrove" and the "Indiana" until the time that the "Indiana" turned to join in the chase would have been going away from each other?

Answer. Not away from each other. To the best of my knowledge the "New York" would have been headed to the eastward. The "Mangrove" to bring Key West would have had to head north about ¼ east. Therefore, if the "Indiana" would have been following the "New York" she would have headed also about east, which would have brought them about ¼ circle apart.

12. Cross-question. Were the "Indiana" and "Mangrove" in sight all the time from the time that you left the "Indiana" until Mr. Dayton went on board the "Panama?"

Answer. I do not know as they were in sight all the time, but I know from observation that they were in sight from the time that we first discovered the "Panama." Before that time I had no occasion to look in the direction of the "Indiana" to see if she was in sight.

13. Cross-question. How long was it from the time that the "Mangrove" started to chase the "Panama" up to the time that she hove to and Dayton started to leave the "Mangrove?"

Answer. In fact the "Mangrove" did not chase the "Panama"
208 at all, because they were almost then bow on of one another.

14. Cross-question. How long was it from the time that this vessel, which turned out to be the "Panama," was sighted to the time of Dayton's starting to leave the "Mangrove" to go on board?

Answer. Thirty to forty-five minutes.

15. Cross-question. Was it during that time that this conversation between Mr. Cassard and yourself relative to the "Indiana" took place?

Answer. During that time.

16. Cross-question. Was it during that time that these men sent for paper and pencil and were figuring on pri[illegible] money?

Answer. During the time that we first sighted the "Panama" until both engines were stopped of both ships.

17. Cross-question. Who were these men?

Answer. I did not know any of them. I think they were men that were connected with the light-house service, and when the "Mangrove" was turned over from the light-house service they simply took the crew.

18. Cross-question. How many men were engaged in this conversation that you speak of?

Answer. I should say six to ten.

19. Cross-question. You say they sent for paper. Did they get paper?

Answer. I do not know that they sent for it. The remark was made among the men, asking if they had any pencils and paper, so they
209 could figure out their prize money. There was one man, I do not know his name, he was a gunner's mate, I think, who was on the "Mangrove," and had general supervision over those two guns. I know he became very angry at some of the men and commenced swearing.

20. Cross-question. Were you and Chaplain Cassard also discussing this question of prize money?

Answer. There was a remark made between us that, by the general rumors which we had heard, that the "Panama" was a very rich prize; that the Admiral had issued verbal orders to keep a general lookout for the "Panama," and that we would be "in it," as being not only on the "Mangrove," but as being members of the crew of the "Indiana."

21. Cross-question. When was it that you first looked for the "Indiana?"

Answer. When we changed our course; when Mr. Everett came on deck and ordered course to be changed; I then took occasion to look to see if there was any other ship in sight, and more particularly to see where the "Indiana" was, because I knew that she was on her way to Dry Tortugas, and she must surely be somewhere in sight.

22. Cross-question. Did you mention the fact that the "Indiana" was in sight to anybody but Chaplain Cassard at that time?

Answer. Not at that time that I know of. I did later on.

23. Cross-question. Did you mention it any time prior to Mr. Dayton's going on board the "Panama?"

210 Answer. I had a conversation with Mr. Cosgrove before Mr. Everett came on deck relative to the battery of the "Panama." It was generally known that she carried guns, and it was remarked between Mr. Cassard and myself that she possibly might put up a fight. I said, "Well, if she does I guess we are in for it," and then I remarked that the "Indiana" would help us out, because she then was coming towards us. We could see her smoke very plainly. And he said then that he did not think the ship was the "Panama;" that she would not be coming along so leisurely if she was. She was moving very slowly and did not seem to make any effort to get out of the road.

24. Cross-question. Was there anyone else whose attention you called to the fact that the "Indiana" was in sight?

Answer. Not that I know of.

25. Cross-question. You stated, if I understood you correctly, in substance, that the "Indiana," in your opinion, was within signalling distance at the time that Dayton went on board the "Panama."

Answer. Yes, sir.

26. Cross-question. Did you look at that particular time towards the "Indiana?"

Answer. After the first shot was fired I looked in that direction on one or two occasions.

27. Cross-question. You put the "Indiana's" distance from the "Mangrove" at from 4 to 6 miles?

Answer. Yes, sir; 4 to 6 miles.

211 28. Cross-question. You spoke of this Ardois system of signals. Are they light signals?

Answer. Yes, sir.

29. Cross-question. Is it customary to make these signals in the daytime?

Answer. No, sir; at that time it was a little hazy, especially towards the coast of Cuba.

30. Cross-question. You were speaking of these light signals as signals that the "Indiana" could have made?

Answer. She could have made those very easily. I should say that it was about sundown.

31. Cross-question. The coast of Cuba showed a dark background?

Answer. Yes, sir; it was very dark there.

32. Cross-question. When it came to signals that the "Mangrove" could make to the "Indiana," what about light signals?

Answer. I do not think that the "Mangrove" carried any signals of that class, to the best of my knowledge, and she has a better chance to make flag signals, because she was more to the westward and had a fair horizon back of her.

33. Cross-question. But it was dark enough or hazy enough for light signals to be used?

Answer. Not as a general rule. It could have been used, but I don't think they would have used them as a general rule.

34. Cross-question. You stated, in answer to interrogatories on page 43 of the record: "I mean by within signalling distance that the ordi-

nary day signals used in the Navy, hoists of flags or wigwags, could
212 be read by use of a glass from the bridge of the "Mangrove," and wigwags from the "Indiana's" crane could have been read by use of the glasses." In your opinion could wigwag signals have been read from the "Mangrove's" bridge at the time that Ensign Dayton went on board the "Panama?"

Answer. Yes, sir.

35. Cross-question. Do you consider that wigwag signals can be read from 4 to 6 miles?

Answer. I have read them myself at twelve miles—not in the Navy, however.

36. Cross-question. Made on the same principle as the navy signals?

Answer. On the same style, and we used the old Morse system. Now we used what we term the "22 system."

37. Cross-question. In making the above statement do you mean merely that you could see the flags at that distance and see them moving, or that you could read what the signals meant and interpret them?

Answer. I have read signals and interpreted it in the Army at 12 miles.

38. Cross-question. Where was that?

Answer. In Arizona, New Mexico, and all through the West.

39. Cross-question. Where were such signals as that made from?

Answer. We had to get favorable conditions.

40. Cross-question. Tops of mountains?

Answer. Not as a general rule. We got a favorable back-
213 ground, and we used different-colored flags to suit background.

41. Cross-question. How high a seaboard had the "Mangrove;" that is, how high did the body of the ship stand out of the water?

Answer. Six feet, on or about.

42. Cross-question. When was it that you and Chaplain Cassard talked about the "Indiana" coming up? Was it before the firing began across the bow of the "Panama," or afterwards?

Answer. Before the firing commenced.

43. Cross-question. Did he call your attention, or did you call his to the "Indiana?"

Answer. I could not say positively who made the first remark.

44. Cross-question. How long after the "Panama" and "Mangrove" got under way headed in the direction of the "Indiana" before the "Indiana" fired a shot across the bow of the "Panama?"

Answer. I should say thirty-five to forty minutes.

45. Cross-question. How far away was the "Panama" from the "Indiana" at that time?

Answer. 300 yards.

46. Cross-question. How dark was it then?

Answer. It was not real dark. It was dark twilight. Some of the men on the "Indiana" distinguished me afterwards, and called me by name.

47. Cross-question. How close did you go?

Answer. We went close enough so that Captain Taylor and Mr. Everett could talk through their megaphones—I should say 50
214 yards.

48. Cross-question. You were probably 50 yards at the time that some of the men of the "Indiana" recognized you?

Answer. Yes, sir.

49. Cross-question. At the time that Ensign Dayton went on board the "Panama" was the wind blowing in a direction from the "Mangrove" towards the "Indiana?"

Answer. Now, sir, to the best of my knowledge, the wind was blowing from the westward; that would bring the wind about on the port bow of the "Indiana" and about the starboard bow of the "Mangrove."

50. Cross-question. How long did you remain on the "Mangrove?"

Answer. Until about half past ten, or between ten and twelve on the following day.

51. Cross-question. What ship did you go to then?

Answer. I remained in Key West for two or three days, and then joined the "Indiana."

52. Cross-question. You were with the "Indiana" during the rest of the war?

Answer. Yes, sir.

CHARLES E. MURRAY,
Chief Yeoman, U. S. N.

STATE OF NEW YORK, *County of Kings, ss:*

Sworn to and subscribed before me this 1st day of November, A. D. 1901.

[SEAL.] WILLIAM J. LEONARD,
Notary Public # 25.

215 Supreme Court of the United States.

THE UNITED STATES, APPELLANT, *vs.* THE OFFICERS AND CREW OF THE U. S. S. "MANGROVE." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," "Indiana," and "Wilmington," appellants, *vs.* THE OFFICERS AND CREW OF THE U. S. S. "MANGROVE." } No. 17930.

DISTRICT OF COLUMBIA, *ss:*

On the 14th day of October, 1901, personally appeared before me, D. Fulton Harris, a notary public in and for the said District, and by consent of parties acting as commissioner in the aforementioned cases, French E. Chadwick, upon call of the officers and enlisted men of the U. S. S. "New York," who first by me being duly sworn to speak the truth, the whole truth, and nothing but the truth was thereupon examined by James H. Hayden, esq., for the officers and enlisted men of the U. S. S. "New York," William B. King, esq., for the officers and men of the U. S. S. "Indiana," and Benjamin Micou, esq., for the officers and crew of the U. S. S. "Mangrove." The questions and answers hereinafter appearing were duly taken down in shorthand by a disinterested amanuensis, H. Chas. Hallam, agreed upon by the counsel for the

parties aforesaid, and by him reduced to writing, and after being so reduced the same was read over by the said French E. Chadwick, and by him subscribed in my presence.

[SEAL.]

D. FULTON HARRIS,
Notary Public, D. C.

216 FRENCH E. CHADWICK, being duly sworn, deposes and says, in answer to interrogatories propounded to him by Mr. Hayden:

Question 1. Captain, please state your name and rank.

Answer. F. E. Chadwick, Captain, U. S. Navy.

Question 2. On what duty were you engaged during the spring of 1898?

Answer. I was commanding the U. S. S. "New York," flagship of the North Atlantic Squadron, and also acting as chief of staff to Admiral Sampson.

Question 3. Where was the "New York" on or about April 25, 1898?

Answer. On the blockade off Havana; she was to the northeastward of that port.

Question 4. What recollections, if any, have you with regard to the capture of the Spanish steamer "Panama?"

Answer. About 5.30 in the afternoon of April 25th, 1898, I was informed that there was a strange steamer to the northeast. I went to the after bridge to look at her. I observed that the stranger was a three-masted steamer with a small funnel. The "Indiana" at this time was coming toward us, in the line between that steamer and ourselves. We called her attention to the steamer by signal, asking her character and nationality. The "Indiana" replied, I think, that she would go and see, or words to that effect, and immediately turned and went off in the direction of this strange vessel. Some time after the "Indiana" had turned and had gone off in that direction we noticed the "Mangrove" approach the strange steamer, which had turned round towards the eastward. About six o'clock, or probably after an interval of half an
217 hour, the "Mangrove" was apparently alongside the strange steamer. The "Indiana" in the meantime was steaming steadily in her direction. While this was occurring we had observed a steamer leaving the port of Havana. I had previously asked the Admiral whether we should not ourselves go in the direction of the stranger, but observing this other vessel coming from the harbor of Havana, the Admiral after consultation decided that as the "Indiana" and the "Mangrove" were already near the former that we should stop and question the steamer then leaving Havana. We went to the westward to speak her, and did so after some little time. When we had spoken this steamer we started in the direction of the "Mangrove" and the first stranger, which proved to be the "Panama," and found them after some little time. I forget now what time it was, but it was quite dark.

Question 5. How far distant from you was the "Panama" when you observed her at half past five?

Answer. I should say that she was from eight to ten miles distant.

Question 6. How far was the "Mangrove" from you at that time?

Answer. I can not say. We did not see the "Mangrove" until some little time had elapsed after the "Indiana" had turned round.

Question 7. How far was the "Indiana" from you when you exchanged signals with her concerning the "Panama"?

Answer. I should say that she had approached within a mile.

Question 8. How far distant from you was the "Panama" when you saw the "Mangrove" run alongside of or close to her?

Answer. I do not think her distance had changed materially from what I said before—that is, from eight to ten miles.

Question 9. How far had you proceeded to the westward of the
218 position which you occupied when you exchanged signals with the "Indiana"?

Answer. We had not started to the westward when we exchanged signals with the "Indiana." It was still in our minds to go and inquire into the character of the strange vessel then approaching from the northeast.

Question 10. The "Panama"?

Answer. The "Panama." But the approach of the "Indiana" and the fact that she was nearer to the "Panama" than we were, caused the flagship to remain where she was, and decide to start to inquire into the character of the vessel then leaving Havana harbor.

Question 11. How far had you proceeded to the westward when you saw the "Mangrove" run alongside the "Panama"?

Answer. Practically we had not gone to the westward at all. I mean I don't think we had even started our engines to the westward. We lay dead on the water for some time before we started to intercept this steamer. We spent some time in observing what was going on in the vicinity of the "Panama."

Question 12. What speed was the "Indiana" making when she turned from you in the direction of the "Panama"?

Answer. I should say about ten knots.

Question 13. In what direction was the "Panama" heading and what course did she hold after you observed her at 5.30?

Answer. The "Panama" was first heading to the westward and then she turned around and headed to the eastward.

Question 14. How was the "New York" headed when the "Panama" was first seen?

Answer. The "New York" was lying dead on the water with her
head to the westward, so that we were approximately heading in
219 the same direction as the "Panama."

Question 15. Had she continued on her first course, how near would the "Panama" have come to the "New York"?

Answer. Well, she would probably have passed within, say, five or six miles of us if she was standing in for Havana.

Question 16. After the "Panama" had changed her course to the eastward, or away from you, how far did she proceed before the "Mangrove" ran alongside her?

Answer. Only a short distance.

Question 17. By what means did you observe the movements of the "Panama" which you describe?

Answer. She could be seen without a glass, but I used a glass to look at her.

Question 18. Where was that glass situated on board the "New York"?

Answer. On the after-bridge.

Question 19. What that glass? At what distance could you make out the rig, character, and color of a strange vessel?

Answer. I could make out the general rig of a vessel at a distance of fifteen miles, but could not have made out the colors at that distance.

Question 20. At what distance could you have made out the colors?

Answer. I should say, with that glass—easily enough at eight or ten miles, in case the colors were advantageously displayed.

Question 21. What was the direction of the wind during this time?

Answer. Northeast.

220 Question 22. In what direction would that wind carry the "Panama's" color?

Answer. Towards us; that is, they would be "edge on."

Question 23. Under such circumstances, at what distance could you have made out the "Panama's" colors?

Answer. We might not have made out her colors within a mile under those conditions. If a flag blows "edge on," it is a very difficult thing to make out the colors.

Question 24. At what distance could you, with the glass which you used in observing the "Panama", have read naval flag signals?

Answer. I should say certainly eight miles.

Question 25. Under the conditions of wind and light existing at the time of the "Panama's" capture, at what distance could you have read signal flags?

Answer. We could have read them at that distance in case they had been blowing out in an advantageous direction.

Question 26. What was the condition of the light from half past five to six o'clock on the afternoon of April 25, 1898?

Answer. The light was from the westward and on the "Panama."

Question 27. How would that affect your range of vision to the eastward, or in the direction of the "Panama"?

Answer. It was advantageous.

Question 28. Looking in the opposite direction, or from the "Panama" towards you, what would have been the effect of that light?

Answer. Disadvantageous.

Question 29. In your experience in the Navy, have you had occasion to notice the effect of light or its direction upon the distance at which you can read signals?

Answer. Very frequently.

221 Question 30. Describe any actual experience that you now have in mind.

Answer. I have in mind an experience that happened while we were leaving Toulon, in squadron, in 1889. Then, though we were but twelve hundred yards from the flagship, it was impossible to read certain signals which they were making at that time—it being about half past eight in the morning—as we had to look towards the sun. I remember this case particularly, as a grave question arose between the admiral and the commanding officer of one of the ships in relation to the delay in getting underway.

Question 31. At what rate of speed was the "Panama" approaching you when you discovered her?

Answer. I could not estimate that. I knew she was not a fast vessel by the size of her smokestack; its small size showed that she was of moderate power. This is a very fair way to estimate roughly a ship's power.

Question 32. What was the speed of the "Mangrove"?

Answer. I do not think she could go over eight knots. I frequently crossed from Key West to Havana in her, so that I knew her very well.

Question 33. Had she been alongside the "New York" during the afternoon of April 25, 1898?

Answer. No; I think not.

Question 34. How long would it have taken the "New York" to reach the "Panama" from the position where you say when you first saw her?

Answer. It would have taken us a trifle over half an hour, as the "New York" at the time had all her boilers on and could readily have developed a speed of from fourteen to sixteen knots, or more.

222 Question 35. Could you hear the discharge of the "Mangrove's" guns when she stopped the "Panama"?

Answer. No.

Question 36. At what distance can the discharge of a small gun be heard at sea?

Answer. You might hear it ten miles, and you might not hear it half a mile; sound is very peculiar.

Question 37. Under the conditions which prevailed at that time, how far could you have heard the firing of small guns?

Answer. You never can determine that. Experience will never show, conclusively, how far you can hear. I have had very long experience in conducting sound signals at sea. I have heard a steam siren at a distance of seventeen miles, sometimes, when at others, under apparently perfect conditions, the same siren could not be heard half a mile.

Question 38. What system, if any, exists in the Navy of signaling by the sound of guns?

Answer. The guns may be used in a fog or in an extreme emergency.

Question 39. Under the conditions which prevailed on the afternoon of April 25, 1898, at what distance, in your opinion, could you have heard the discharge of one of the larger guns on the "Indiana"?

Answer. Oh, possibly thirty miles. But it is also possible that they could not be heard five miles; sound is most uncertain.

Question 40. In your opinion, as an officer of the Navy, was the "New York" within signal distance of the "Mangrove" or the "Panama" at six o'clock on the afternoon of April 25, 1898?

223 Answer. Not within ordinary signal distance.

Question 41. Please explain more fully what you mean by that answer.

Answer. I mean that there is no such thing as signal distance per se; it is an extremely variable quantity. We could probably have made out her signals with a glass if the signal flags had been blowing in an advantageous direction with relation to ourselves. I think if the colors on her mast, or any other signals, had blown at right angles to the line joining the "Mangrove" and ourselves that we could have made them out.

Question 42. In your opinion, could the "Panama" and the "New

York," or the "Mangrove" and the "New York," have communicated with each other by flag signals at the time of the capture?

Answer. I do not think the "Mangrove" could have communicated with the "New York," because she had very small signal flags.

Question 43. At the time of her capture could you have communicated with the "Panama" or the "Indiana?"

Answer. I think we certainly could have read the signals of the "Indiana," but that the "Indiana" could not have read ours on account of the light.

Question 44. Could you with the "Panama?"

Answer. I don't think she could have read our signals on account of the direction of the light.

Cross-examination by Mr. MICOU:

Cross-question 1. Captain, did you see the "Mangrove" at the time she came alongside the "Panama?"

Answer. Yes.

Cross-question 2. Where was the "Indiana" stationed with reference to the "New York?"

224 Answer. Well, the "Indiana" had been to the northward and eastward—I don't remember for what purpose—and she was coming down directly from the "Panama" toward us. The "Panama" and the "Indiana" were in line with us.

Cross-question 3. Where was the "Wilmington" stationed?

Answer. She was to the eastward of us.

Cross-question 4. On which side of the "New York?"

Answer. Her usual station was to the eastward of where we were then lying and somewhat more inshore; that is, the "Wilmington," the "New York," and the "Panama" would make a triangle, of which the line joining the "New York" and the "Wilmington" would be the southern base.

Cross-question 5. What I want to get at is this: Where were these three ships on that afternoon in relation to each other—the "Wilmington," the "Indiana," and the "New York?"

Answer. My impression is that the "New York" and the "Wilmington" were on an east and west line, which formed the base of an equilateral triangle. The "Panama" was to the northward of that line and at the northern angle of the triangle, and the "Indiana" between that angle and the southwestern angle of the triangle where the "New York" was.

Cross-question 6. How far out from shore was the "New York?"

Answer. She was a good way from shore, but I am not able to say how far. I can not now remember.

Cross-question 7. When the "Indiana" was approaching you, did you see the "Mangrove" before the "Indiana" turned in pursuit of the "Panama?"

Answer. No; I saw the "Mangrove" after that.

Cross-question 8. Did the "Indiana" continue her course right straight toward you until she turned, or did she stop at all before

225 she turned?

Answer. It was apparent to us that she had not observed this strange vessel, and we called her attention to it and she turned then.

Cross-question 9. Was the "Indiana" moving toward you then, or was she lying dead on the water?

Answer. Moving.

Cross-question 10. She turned at once?

Answer. Oh, yes; she was moving toward us until she turned.

Cross-question 11. Well, now, when you first saw the "Mangrove" was she between the "Indiana" and the "Panama" or beyond the "Panama?"

Answer. My impression is that she was beyond the "Panama," but this is merely my judgment at this time.

Cross-question 12. That is, she was approaching the "Panama" from one direction and the "Indiana" was approaching her from another direction?

Answer. That is my recollection.

Cross-question 13. You say the wind was blowing from the "Panama" toward the "New York?"

Answer. Yes; I am almost certain that it was so. It was in the nature of things that it should be so, being in the northeast trades there; though the wind was very light.

Cross-question 14. Can you say that the "Panama's" flag at the time the "Panama" and the "Mangrove" stopped was "edge on" towards the "New York?"

Answer. Oh, no; what I say is that the tendency would be to have it blow "edge on," but it seems to me that the wind was so very light
226 that there was not enough of it to blow a flag out in any direction.

Cross-question 15. The wind was blowing the same way on the "Mangrove" and on the "Panama," was it not?

Answer. Oh, yes.

Cross-question 16. And any advantages or disadvantages offered one ship would have existed the same way with the other?

Answer. You mean, that is, that the——

Cross-question 17. The disadvantages of the wind would be the same for each vessel?

Answer. Yes.

Cross-question 18. That is what I want to get at. Was the "New York" lying dead on the water until after the time of the capture?

Answer. Yes.

Cross-question 19. Then you started in pursuit of this——

Answer. We did not start to the westward until after seeing the "Mangrove" alongside the "Panama."

Cross-question 20. The glass that you speak of having used on the "New York," was that the kind—what kind of a glass was that?

Answer. It was a telescope, which had been sent from the Observatory, mounted on a tripod, with, I should say, about a five-inch object glass.

Cross-question 21. Was it such a glass as was usually found on vessels?

Answer. No; it was an unusual glass.

Cross-question 22. Did any other vessel in the fleet have one of these glasses?

Answer. No; it was the only one in the fleet.

227 Cross-question 23. I don't know that there is anything else that I wish to ask the captain.

Answer. I want to say that when we started to the westward the sun was just setting. That would make it after six o'clock. So the "Mangrove" ran alongside the "Panama" about six o'clock.

Cross-question 24. The "Panama" was at Key West some time afterwards, was she not?

Answer. Yes.

Cross-question 25. Did you see her there?

Answer. No; I don't remember going up to Key West at the time she was there.

Cross-question 26. Was not the "Panama" expected in Havana about the time of her capture, and were not the vessels of the squadron—I don't mean the "Mangrove," but the other vessels—on the lookout for her?

Answer. Oh, yes; I think everybody was on the lookout for her.

Cross-question 27. Was there not a kind of rivalry among the vessels of the fleet as to her capture?

Answer. I don't remember that much was thought of efforts to capture merchant vessels. The "Panama" had been particularly spoken of as being on her way from New York to Havana and we had been warned. But I think that more attention was paid to the duties of the blockade than to any idea of capturing merchant vessels.

Cross-question 28. Had any vessel of the fleet been out looking for her the day before?

Answer. I think not.

Cross-question 29. There is one other question that I would like to ask, in reference to what you stated about sound signals; is the
228 hearing of the discharge of a gun at sea any measure whatever of the distance at which flag signals could be read?

Answer. No.

Cross-question 30. Can you see the smoke of a discharge further than you can hear the gun fired?

Answer. That is all according to circumstances. The "Kearsarge" carried on some target practice lately off Newport, and while she was distant over thirty miles we could hear the firing of her guns, which shook the windows in Newport like an earthquake. Now, she might have fired within ten miles and the sound never have been heard. There are certain peculiar features about the distance sound will travel that are not understood and can not be explained.

Cross-question 31. Is the distance at which you could see smoke any measure of the distance at which you could read flag signals?

Answer. No, I should say not; because you can see the form of signals without being able to see their colors. The visibility of signals depends almost altogether upon the direction with which the light falls upon them with respect to the position of the observer. Thus, in order to read signals well, you must have the light at your back and you must be between the light and the signals.

F. E. CHADWICK.

Sworn to and subscribed before me this 1st day of November, 1901.

[SEAL.]

D. FULTON HARRIS,
Notary Public, D. C.

229 (Indorsed:) Supreme Court of the United States. The United States v. Officers and Crew U. S. S. "Mangrove." No. 17685. Officers and Men of the "New York," etc., v. Officers and Crew of "Mangrove." No. 17930. Testimony of French E. Chadwick.

230 Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
vs.
THE OFFICERS AND CREW OF THE U. S. S. "MANGROVE." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," "Indiana," and "Wilmington," appellants,
vs.
THE OFFICERS AND CREW OF THE U. S. S. "MANGROVE." } No. 17930.

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss.

On the 23rd day of August, 1901, personally appeared before me, Charles H. Simonds, jr., a notary public in and for the aforesaid county and Commonwealth, and by consent of parties acting as Commissioner in the aforementioned cases, William H. Everett, upon call of the officers and crew of the U. S. S. "Mangrove," who first by me being duly sworn to speak the truth, the whole truth and nothing but the truth, was thereupon examined by Benjamin Micou, esq., for the officers and crew of the U. S. S. "Mangrove," and by William B. King, esq., for the officers and men of the U. S. S. "Indiana." The questions and answers hereinafter appearing were duly taken down in shorthand by a disinterested amanuensis, Wm. S. Gregg, agreed upon by the counsel for the parties aforesaid, and by him reduced to writing; and after being so reduced the same was read over by the said William H. Everett, and by him subscribed in my presence.

231 WILLIAM H. EVERETT, being duly sworn, deposes and says, being examined by Benjamin Micou, esq:

No. 1. Q. Please state your full name, age, and occupation, and your present duties.

A. William H. Everett, commander, U. S. N.; age, fifty-four; at present on duty in the navy-yard, Boston, Mass.

No. 2. Q. What duty were you on in April, 1898?

A. I was in command of the U. S. S. "Mangrove." I think I joined her about the 12th of April.

No. 3. Q. Were you in command of her on the 25th of April, 1898?

A. Yes.

No. 4. Q. Please state the occurrences of that day in connection with the capture of the "Panama," beginning at the time that you first went to the "Indiana."

A. On the 25th of April I was on the blockade off Havana, in company with other ships of the squadron. I had been aboard the flagship "New York," and I was directed by Admiral Sampson to go to the

"Indiana," and report to Captain Taylor, in view of a combined expedition, for which the "Indiana," "Mangrove," and other ships were detailed. Admiral Sampson also requested me to take the "Indiana's" mail to Captain Taylor. On leaving the "New York" I proceeded with the "Mangrove" to the "Indiana." On reaching the "Indiana" I went on board, told Captain Taylor that I was to be associated with him, and delivered the mail. He told me that I could take up any position that I desired, that, of course, was in the proximity of the "Indiana," and I suggested that I patrol the coast inshore of the "Indiana," and in her vicinity, to which he agreed; and as I was leaving the ship he said: "I hope you will catch a prize, Everett." On reaching the "Mangrove" I started ahead to go inshore a little ways, when I was signalled from the "Indiana" to come within hail. I had proceeded a very short distance at this time. I went within hail
232 of the "Indiana," and Captain Taylor hailed me, and said that the mail I had brought from the flagship contained orders affecting both ships; that I would proceed to Key West for coal, and later meet the "Indiana" off Key West, i. e., at the outside anchorage; that the "Indiana" would go to Tortugas that night for coal, as she drew too much water to go into Key West. He also asked me if I would take as passengers to Key West, Chaplain Cassard, of the "Indiana," and one of the yeomen, Murry, in order that they might purchase mess stores at Key West. On the arrival of the chaplain and Murry on board, the "Mangrove" started for Key West. This was about, as I recollect, four o'clock p. m., April 25th. After proceeding some time in the direction of Key West, a steamer was sighted on our starboard bow. I changed our course to intercept her, and put sail on the ship to increase her speed. On arriving near enough to see her colors, I made them out to be Spanish, and on arriving nearer, I made out her name on her bow to be the "Panama." In the meantime I had gone to quarters and fired a starboard six-pounder rapid-fire gun across her bows to bring her to. She did not stop, and I rounded up and fired two shots from the port six-pounder. At the third shot she stopped, and then appeared to start ahead again. At this time I should say we were between 100 and 200 yards from the "Panama." They were apparently starting ahead again after I fired the third shot, when I hailed her, and told her if she started ahead again I would fire into her, when she stopped. I then lowered a boat with a crew of two men, and sent Ensign Dayton, the executive officer of the "Mangrove," on board as prize master, telling him to inform the Spanish captain that he was a prize of war. I told Mr. Dayton to proceed with the "Panama" in the direction of where we left the "Indiana," with a view of securing from her an armed prize crew, as my crew was very small, and I had no small arms
233 or cutlasses on board. I had put in a requisition for some, but they had not arrived, and did not arrive for some time later.

No. 5. Q. Do you know what time it was when Ensign Dayton boarded the "Panama?"

A. As Ensign Dayton was going up the ladder of the "Panama," I noted the time, and directed the navigator, Naval Cadet Palmer, to enter it in the log, and it was seven minutes past six p. m. On the return of the boat from the "Panama," which boat returned immediately after

landing Mr. Dayton, I hoisted her on board. The "Panama" started ahead in obedience to my orders heretofore set forth, and I accompanied her with the "Mangrove," keeping just on her port quarter. After steaming ahead about fifty minutes, I should say—and by that time it was dark or late twilight—I heard a shot whistle through the air, apparently going over the "Panama," and I steamed ahead and saw the "Indiana" steaming up to her. I hailed the "Indiana," and said something to this effect: "Captain Taylor, that is my prize." To which he replied: "I congratulate you; what is she?" To which I replied, the "Panama," when the crew of the "Indiana" cheered. I then told Captain Taylor that I had no small arms aboard, and very few men, and asked him if he would send me an armed prize crew, together with an officer, and requested him to have the officer junior in rank to my executive officer, Ensign Dayton, then on board the "Panama" as prize master. Captain Taylor asked me how many men I desired; I told him that I would leave that to him. Then the "Indiana" sent her men over to the "Panama," keeping her searchlight turned on the "Panama's" ladder to facilitate the landing of her men. The men from the "Indiana" consisted of Naval Cadet Falconer, ten marines, and five bluejackets, all armed. Captain Taylor then directed me to proceed in search of the admiral with the "Panama," and report to him for orders.

234 The "Panama" and the "Mangrove" started ahead in the general direction of where I thought we might find the "New York," followed by the "Indiana." Shortly after we started the "Indiana" left us, and, as I understood afterwards, in chase of something that she saw. The "Panama" and the "Mangrove" continued on for a while, and then I concluded that the better way to communicate with the admiral was to let him find us. The "Panama" was brilliantly lighted up, and I opened the "Mangrove's" ports and started her dynamo. I also hoisted two white lights at the masthead, which was the private signal for that night. I then hailed the "Panama" and told Mr. Dayton to stop her; the "Mangrove" also stopped. We lay there thinking that this illumination would bring all the ships in sight to us. Shortly after the "Indiana" left us we sighted the "Wilmington," she being attracted by the lights. I recognized her and hailed the captain. He asked me what I had there, and I told him the "Panama" and that I was in search of the admiral. The captain of the "Wilmington" asked if he should accompany me, and I replied that I should like to have him to do so. The next thing that we saw was a torpedo boat that threw a searchlight on us. In the meantime I was using the "Mangrove's" searchlight, which is similar to the one for picking up buoys. I kept the light on the "Panama" in order to impress them a little. While we were lying still in the water the "New York" came up on the port side of the "Panama;" I was then on the "Panama's" starboard side. The "New York" hailed the "Panama," and I think I recognized Captain Chadwicks' voice, her captain, inquiring what ship that was, and Ensign Dayton replied that it was the "Panama," a prize, at which the crew of the "New York" cheered. The next question from Captain Chadwick was: "Who captured her?" To which Ensign Dayton replied, the "Mangrove," which called forth another cheer from the "New York." Then Captain Chadwick hailed me, and I told him that I had cap-

tured this ship, and that I had gone to Captain Taylor, of the "Indi-
235 ana," for a prize crew as I had no small arms aboard ship; that I had received a prize crew from him, also orders for me to proceed with the "Mangrove" and "Panama" in search of the commander in chief, and to report to him for orders, which I then did. After an interval of about, I should say, fifteen minutes, Captain Chadwick again hailed me, and asked if I understood my orders from Captain Taylor relative to certain duty that the "Mangrove" was to perform regarding the cable-cutting expedition above referred to, as being comprised of the "Indiana," "Mangrove," and other ships.

No. 6. Q. Was that combined expedition that you speak of a part of your instructions?

A. Yes. I told him that I understood the orders perfectly. He then told me that it was the commander in chief's orders that I take the "Panama" and the "Mangrove" to Key West, turn the "Panama" over to the proper civil authorities, and then follow out the orders relative to the cable-cutting expedition. The "Mangrove" and the "Panama" then headed for Key West. I had given Ensign Dayton orders by hail to keep near the "Mangrove" and on our starboard side. The "New York" followed us for some distance and then dropped us, presumably returning to her station off Havana.

No. 7. Q. Did the "New York" or any vessel accompany you to Key West?

A. No. Some time after the "New York" left us a powerful searchlight from a ship on our starboard bow was flashed on the "Mangrove" and "Panama," and kept flashing alternately on both ships as we steamed along past her. She seemed to be lying still in the water, and she kept up the display of her searchlight until she was on our starboard quarter, and I think that ship was probably the "Indiana." I did not see the "Indiana" after she dropped us, presumably in chase of another vessel, during that night.

No. 8. Q. What time did you get to Key West?

A. The next morning, April 26th, at about 10 o'clock a. m.
236 both ships arrived at Key West. I turned the "Panama" over to the civil authorities, took the prize crew aboard the "Mangrove," and received receipts for the cargo and papers from the civil authorities. I think the receipt for the ship was signed by a United States deputy marshal.

(Counsel for the "Indiana" and "Wilmington" here present, not appearing for the "New York," calls attention to the inadmissibility of any of this testimony as affecting the "New York," in absence of due notice to counsel for the "New York.")

No. 9. Q. What was done aboard the "Mangrove" as to looking for other vessels at the time that Ensign Dayton went aboard of the "Panama?"

A. According to my recollection Naval Cadet Palmer instructed several men to scan the horizon with glasses, to see if anything was in sight. My recollection is that Mr. Palmer also scanned the horizon with a glass. I looked around for the same purpose, but whether with a glass or not I am not certain.

No. 10. Q. If a vessel had been in signal distance could you have seen the vessel with your naked eye?

A. I could, I am quite certain. All that I saw was smoke in the direction of where we had left the "Indiana," which smoke to the southward and westward.

No. 11. Q. Did any one report to you directly, or through Naval Cadet Palmer, that the "Indiana" was in sight, and you reply that that was not the direction for the "Indiana," and could not be the "Indiana."

A. No; there was no report of that kind made to me.

No. 12. Q. Where were you at the time that Naval Cadet Palmer reported the result of the observations that he was making for vessels in sight?

A. I was on the forward part of the upper deck, near the pilot house.

No. 13. Q. Were you on the bridge?

A. No.

237 No. 14. Q. Who was present at that time?

A. I could not say, but there were a number of people on that deck. I was going from one side of the ship to the other, as occasion demanded. On this deck and from this position I could look down on the next deck where the guns were, and they were practically right under me, within ten feet or so. And that was the position that I had during the whole capture.

No. 15. Q. Do you remember Chaplain Cassard being there at the time of this report?

A. Yes. He was around there about all the time, as near as I can recollect.

No. 16. Q. Was there any defect in your eyes at that time?

A. No.

No. 17. Q. Did you have any conversation with Chaplain Cassard on the evening of the capture about your sight, in which you in substance told him that your eyesight was not good?

A. No.

No. 18. Q. How long were you on the "Mangrove?"

A. From the 12th of April to the 7th of June.

No. 19. Q. Please state anything about any trouble with your eyesight while you were on the "Mangrove."

A. On the 6th of June I spoke to Mr. Dayton and told him that I was having some trouble with my eyes, and that I thought it was probably due to my glasses not being right; that I had not changed them for some years. He suggested that I go aboard the "Miantonomoh," which vessel, with the "Mangrove," was in Key West on that date, and consult Dr. Webber, whom Dayton said had made a specialty of the eye. I consulted Dr. Webber, who seemed to agree with me that it was a question of the advisability of changing glasses, and as I was leaving he suggested that I leave a sample of my urine for his examination. That afternoon he came aboard the "Mangrove," and informed me that

238 the analysis of my urine showed that I had diabetes, and he strongly advised my going North, to which I disagreed; but finally an order for a medical survey on me was given by Commodore Remey, then in command at Key West, and I was invalided and sent home with diabetes. I consulted an oculist, who stated that the optic nerve had been strained. I had been on deck almost constantly, and using my eyes night and day, using binoculars and other glasses, etc., and that was probably the cause

of the condition of my eyes. He prescribed for me, and soon my eyes returned to their normal condition, which I consider equal to the best of the average man of my age.

No. 20. Q. Was there any trouble with your eyes on April 25th?

A. No.

No. 21. Q. Did your sight ever become so bad that you could not distinguish a large war vessel at five or six miles distance?

A. Never.

No. 22. Q. How far can a ship like those large ships be seen—like those that were on duty down there?

A. I should say easily twelve miles—a large ship. Of course you could not see this distance distinctly without the use of a glass.

No. 23. Q. You have seen a copy of the testimony of Captain Dawson, of the Marine Corps?

A. I have.

No. 24. Q. In answer to question No. 165, by Captain Dawson, where he is speaking of seeing the boat in the water between the "Mangrove" and the "Panama," he says, "It was, of course, very low in the water, and dark in color, so that its movements were not distinct like those of a ship at the same distance would have been." What was the color of the boat that you sent from the "Mangrove" to the "Panama."

A. White.

No. 25. Q. How many people were in that boat?

A. There were two besides Mr. Dayton going to the "Panama," and two in the boat coming back.

239 No. 26. Q. When was it that you gave to Mr. Dayton the orders to steam in the direction of the "Indiana?"

A. To the best of my recollection it was when he left the ship.

No. 27. Q. Did he return to the "Mangrove" with the boat?

A. No.

No. 28. Q. Was there any sealing up of papers, or anything of that sort, at that time?

A. Not that I know of.

No. 29. Q. About how long were the two ships at a standstill?

A. I should say about fifteen minutes.

No. 30. Q. Was the flag of the "Panama" run down at the time you captured her?

A. No.

No. 31. Q. Do you know what was the custom at the time of capture, during the war with Spain, as to the running down of the flag of the prize, when the prize was a merchant vessel?

A. It was the custom for all prizes to fly their ensigns until their case was adjudged.

No. 32. Q. Was the ensign of the "Panama" flying when you went into Key West?

A. Yes. I took her in with her ensign flying, and every time that I saw her afterwards she was flying the Spanish ensign; and I think that there was an order issued by the Secretary of the Navy that prizes should carry their flag until condemned.

No. 33. Q. Was it customary then for merchant vessels in charge of vessels of war, after they were captured, to have their flags flying?

A. To the best of my knowledge it was.

No. 34. Q. What is the Spanish flag—as to colors?

A. It is two horizontal red stripes, with a horizontal yellow stripe between the two red ones.

No. 35. Q. What are the colors in signal flags?

A. Yellow, red, and blue.

240 No. 36. Q. As far as distinguishing the colors go, is a Spanish flag much more difficult to distinguish than a signal flag?

A. I do not think anything could be easier to distinguish than a Spanish flag, because it is comprised of the two best colors for being distinguished, i. e., red and yellow.

No. 37. Q. How long was Chaplain Cassard on your ship?

A. From the time of his coming aboard from the "Indiana," when we started from that ship for Key West, to his going ashore at Key West, on the forenoon of the 26th of April. After that he returned to his own ship.

No. 38. Q. Do you remember taking any compass bearings while he was aboard the ship?

A. I took no compass bearings at all. I do not think that I took a compass bearing while I was attached to the ship. My subordinates did that.

No. 39. Q. When subordinates report the compass bearings, and the compass is right there, is it customary for the commanding officer to examine it himself.

(Question objected to as leading.)

A. No.

No. 40. Q. Do you have any recollection of making any comment whatever, while Chaplain Cassard was aboard the ship, about its bearings or route?

A. No.

No. 41. Q. Was anything ever said to you by Chaplain Cassard about the "Indiana" being in signal distance, or any vessel being in signal distance?

A. Chaplain Cassard told me in effect that the prize was the "Mangrove's," that there was nothing within signal distance of her to share it, and that the small ships would get the prizes.

241 No. 42. Q. When did this occur?

A. That occurred on the deck of the "Mangrove;" I think when we were lying near the "Panama," and at the time of the capture.

No. 43. Q. Do you remember anything about Yeoman Murry; whether you assigned him to any duty while he was aboard the "Mangrove?"

A. I do not remember assigning him to any duty.

No. 44. Q. Chaplain Cassard, in his testimony, said that he, Murry, was at one of the guns. Do you know anything about that?

A. He was not there by any direction of mine. I do not think that he was there at all, but everybody was about the guns, and he might have voluntarily assisted. I could not say whether he did or not, but if he was, it was entirely voluntary on his part, and probably done through zeal.

No. 45. Q. Captain Dawson in his answer to the 9th interrogatory, which was a general question as to what occurred, in speaking of the approach of the "Indiana" to the "Mangrove" after the capture, says,

"Seeing that the Spanish colors were still flying on board the 'Panama,' we then fired a shot across her bow, upon which her colors were immediately hauled down." Do you remember that shot?

A. I remember the shot, but I do not remember about her colors.

No. 46. Q. How late was it as to the condition of darkness, etc.?

A. It was practically dark, might say late twilight, as I recollect it. Because immediately after they started the prize crew over to the "Panama," they used the searchlight on the landing of the "Panama" to facilitate the men disembarking from the boat. It was well dark about that time.

No. 47. Q. The time of firing that shot is put down in the log of the "Indiana" at 6.45 p. m. What time did you state that the capture occurred, when Ensign Dayton boarded the "Panama" as prize master?

A. Ensign Dayton went on board at seven minutes past six, and we started in the direction of the "Indiana" immediately after
242 hoisting the boat on board the "Mangrove," after its return from transferring Mr. Dayton.

No. 48. Q. What were the conditions at the time of day of the capture for reading signals?

A. It was a clear day, and it was late in the afternoon. I do not recollect exactly when the sun set, but it was not very far from sunset.

No. 49. Q. Were these conditions as favorable as they would have been a half hour earlier?

A. I should say not.

No. 50. Q. Commander, you have had experience with signalling?

A. Not much. My duties have been other than those of signal officer.

No. 51. Q. You have had some experience?

A. Yes; many years ago.

No. 52. Q. What do you consider the extreme distance at which day signals can be read—flag signals?

(Question objected to, as the witness has declined to qualify as an expert.)

A. About six miles, under favorable circumstances, with a powerful glass.

No. 53. Q. In answer to question # 9, Captain Dawson also states, "After arriving within hailing distance, the captain communicated with the 'Mangrove.'" Who was the first to communicate with the captain of the "Indiana?"

A. Myself.

No. 54. Q. Just state what occurred after this shot was fired.

A. When I heard the whistle of the shot the "Mangrove" was on the port quarter of the "Panama." I steamed ahead to within hail of the "Indiana," and sang out, "Captain Taylor, that is my prize," to which he replied, "I congratulate you, Everett; what is she?" to which I replied, "The 'Panama.'"

243 No. 55. Q. In answer to this same question, # 9, Captain Dawson states, referring to the "Indiana" just after the prize crew had been sent to the "Mangrove:" "We then proceeded back to the flagship and reported to the admiral, who directed that the prize be taken to Key West, convoyed by the 'Mangrove;' these orders were carried out." Did the "Indiana" come back to make this report?

A. No. As I stated before, Captain Taylor ordered me to proceed in search of the commander in chief, and report to him for orders regarding the "Panama." The "Indiana" followed the "Panama" and the "Mangrove" for some distance, and then left us, and, as I understood afterwards, in chase of something that she saw. I proceeded on and reported to the commander in chief, and received my orders, and I did not see the "Indiana" again for two or three days, at least, unless it was the "Indiana" that threw her searchlight on us when we were on our way to Key West, after being dropped by the "New York."

No. 56. Q. In answer to question # 206, Captain Dawson states, "I am not certain but that the 'Mangrove' was somewhat astern of the 'Panama.'" Please state the relations of the "Mangrove" to the "Panama" during the chase and at the time of the capture, and whether she was ever astern of the "Panama."

A. When we sighted the "Panama," she was on our starboard bow heading in towards Havana. The "Mangrove" was steaming away from Havana towards Key West, and when we sighted the "Panama" she was on our starboard bow. I proceeded to intercept her and head her off, and when we reached her, we were lying off the starboard side, and the "Mangrove" was never astern of the "Panama," except when the "Panama" got underway to go to the "Indiana," the "Mangrove" steamed from her starboard side to the port quarter. But during the chase she was not astern of the "Panama;" on the contrary was ahead of her and going towards her.

244 No. 57. Q. But she was astern after the capture?

A. No. We just crossed from one side to the other in going to the "Indiana."

No. 58. Q. Then you did go astern of the "Panama?"

A. Yes; we crossed from one side to the other after the capture, or after she started for the "Indiana" in company with the "Mangrove;" we went from one side of her to the other. For instance, when she started, she practically went across the "Mangrove's" bow.

No. 59. Q. In answer to question #248, which was after the capture, would you say that she, the "Mangrove," came on with the prize at full speed? Captain Dawson says: "No; she appeared to be going more slowly than full speed." What was the speed of the "Mangrove" after the capture, as she came in towards the "Indiana?"

A. To the best of my recollection it was about eight knots, which was about her best speed. The "Panama" was a faster vessel than the "Mangrove," and my idea was to get to the "Indiana" for a prize crew as soon as possible, and my recollection is that both ships were going as fast as possible, with the "Panama" accommodating her speed to that of the "Mangrove," so as not to run away from her. Both ships were going at eight knots, at least.

No. 60. Q. In your opinion, as a naval officer, would it be possible to read signals from a vessel as large as the "Indiana," which was so far away from the station where the signals were being given, that nothing could be seen from the station except the smoke of the vessel?

A. I should consider it impossible.

No. 61. Q. How far would you consider that such a vessel would have to be away for nothing but smoke to be observed?

A. I should say 15 or 16 miles, at least.

No. 62. Q. Was there any smoke seen anywhere else at the time you looked to see if there was anything in signal distance, except the
245 smoke from the "Indiana?"

A. Not to my recollection. I only saw smoke in the direction of where we left the "Indiana." My recollection is that no one saw smoke anywhere else.

No. 63. Q. When you first came to the "Indiana" to report to Captain Taylor, on the 25th of April, did you come direct from the flagship?

A. Yes.

No. 64. Q. What direction from the "Indiana" was the flagship at that time?

A. She was to the eastward of the "Indiana."

No. 65. Q. What direction did you take when you left the "Indiana" for Key West?

A. I steered the course for Key West, which was, I think, inside of a point one side or the other of north. In making the trip to Key West from Havana, we practically crossed the Gulf Stream at right angles, and as the stream runs from, I think, two to three knots an hour, it is necessary to allow for that in your course.

No. 66. Q. If the "Indiana," after you left her, went in the direction of the flagship, would she have been getting closer to you, or getting farther away?

A. I should judge that she would be going away from us.

No. 67. Q. Do you know anything about the speed of the "Indiana"—what speed she is capable of, and was capable of, at the time the blockade duty was going on?

A. I should say she was good to average 10 knots under ordinary draft.

(Question objected to, as witness has not shown any basis for expert testimony on this subject.)

No. 68. Q. You were down there, in and about the fleet?

A. Yes.

No. 69. Q. You had as good opportunity to judge of the speed of the "Indiana" as the chaplain had, did you not?

A. I was not aboard the "Indiana," of course.

246 No. 70. Q. Well, you had as good an opportunity to judge?

A. He could go to the log and get it, and I could not.

No. 71. Q. Well, you had as good an opportunity to know, from your duties as a naval officer, about the distance at which signals could be read, as a chaplain would have, did you not?

A. Yes.

(Question objected to as leading and immaterial.)

No. 72. Q. You have examined this testimony of Captain Dawson in reference to gun signalling?

A. Yes; I have.

No. 73. Q. How long have you been in the naval service?

A. Thirty-eight years last July.

No. 74. Q. What do you know about the use of gun signals in the Navy?

A. I never have seen any gun signals made in my life.

No. 75. Q. Have you ever known of them to be made?

A. I can not recollect any case that I ever heard of.

No. 76. Q. When you got to Key West, who was the first officer to go ashore?

A. According to the best of my recollection it was Chaplain Cassard.

No. 77. Q. Just state how he came to go ashore first.

A. When we got in there, and after we had anchored, there was a tug full of newspaper correspondents came out to meet us, and there were also a great many people along the wharves; they had evidently hired this tug to go out to see what ship it was that we had brought in. They hailed me, and wanted to know what ship that was, to which I replied, "The 'Panama;'" they then asked who captured her, and I replied that "we did," at which they cheered. Immediately on anchoring I had a boat lowered, with the idea of going to the senior naval officer afloat and reporting my arrival. Chaplain Cassard came up and wanted to know if he could go ashore with me, and I told him yes, but that I was not going direct ashore, as I had to go to the "Newport" first, and after returning from there I would take him ashore. I also took the
247 steward. The chaplain got into the boat, and just as we shoved off, this newspaper tug came along and offered to take me ashore, to which I replied that I could not go ashore just then, as I had to go to the "Newport." I then said that they might take Chaplain Cassard and the steward, which they said they would. They then clamored for the particulars of this capture; I told them that I was in a hurry, but that Chaplain Cassard could tell them about it.

No. 78. Q. Well, then, he was the officer who gave the first reports of the capture?

A. Presumably, yes.

No. 79. Q. How far from Havana were you when this capture was made?

A. I should say about 20 miles.

No. 80. Q. Did you see anything of the "Wilmington" at the time of the capture?

A. I saw no vessel at the time of the capture.

No. 81. Q. When did you first see the "Wilmington?"

A. As I said before, when we were going with the "Panama" and the "Mangrove" in search of the flagship, and after the "Indiana" had left us.

No. 82. Q. In answer to the 5th interrogatory, "Where was your vessel at the time the prize was boarded and possession was taken of her?" Lieut. A. C. Almy, of the "Wilmington," answers: "Seven miles north and east of Havana." If the "Wilmington," at the time of this capture, was within seven miles of Havana, could signals have been read between her and the "Mangrove?"

A. In my opinion, no.

No. 83. Q. Do you know Captain Todd?

A. Yes; very well.

No. 84. Q. Have you had any conversation with him about the "Wilmington?"

A. Yes. On the blockade off Havana the senior officer present, Commodore Watson, signalled for all of the commanding officers to
248 report on board of his flagship, the "Dolphin." While there, Captain Todd volunteered a remark to this effect: That some of

the officers of his ship had asked him (Captain Todd) about putting in their claim for a share in the "Panama," and that he (Captain Todd) had declined, and remarked to me to the effect that he did not think his ship was entitled to a share.

(This testimony is objected to by the counsel for the "Indiana" and "Wilmington" on the ground that Captain Todd had no authority to make admissions against the interests of the "Wilmington's" officers and men, and that his statements are hearsay.)

No. 85. Q. Did you have any other conversation with Captain Todd?

A. Yes. Last January, 1901, while calling on him at his office in the Navy Department, the subject of the "Panama" came up, and he said to me in effect, voluntarily, that he had put in a claim in behalf of the "Wilmington" because the "New York" had put in a claim, and that he was nearer the "Panama" than the "New York" was.

No. 86. Q. Well, Captain Todd was in command of the "Wilmington" as one of the claimants?

A. Yes; so I understand.

Cross-examined by WILLIAM B. KING:

No. 87. Q. Do you understand the system of gun signals as authorized in the signal book?

A. I can not say that I do, except in a general way. I do not know when I last looked at it—the signal book.

No. 88. Q. Is there not a recognized method of calling for aid, outside of formal signal by gunshot?

(Question objected to as immaterial to the issue.)

A. As I understand the question, you could call attention by firing a gun. They would then think something was up.

No. 89. Q. Well, the effect of that would be to bring any vessel within hearing to your aid?

A. Yes, I should imagine it would be taken as a signal of
249 distress; or it might be a case like this one, where we fired to bring a ship to, and not for assistance.

No. 90. Q. When the "Indiana" fired the shot to which you refer, had you seen her?

A. No; not to my recollection.

No. 91. Q. How near was she to you and the "Panama" at that time?

A. I should say practically a mile. I was under the port quarter of the "Panama," and perhaps the "Indiana" was heading on the starboard bow, in which case, the "Panama" being a very much larger ship than the "Mangrove," I would have been unable to see anything in that direction, in fact unable to see anywhere except right ahead, and on the port side of the "Mangrove."

No. 92. Q. That position was what prevented you from seeing the approach of the "Indiana."

A. I should say it was.

No. 93. Q. How long after that shot did you get that signal from the "Indiana" "To come within hail?"

A. That signal may have been made, but I do not recall it.

No. 94. Q. Did the "Mangrove" keep up her speed of eight knots steadily.

A. To the best of my recollection she did.

No. 95. Q. Who was your engineer on the "Mangrove."

A. The engineer was a man who came from the Light-House Service, and had served on board the "Mangrove" as asst. engineer previous to the "Mangrove's" transfer to the Navy Department, in which service she was during the war, and at the end of the war was transferred back to the Treasury Department as a light-house tender of the 7th district.

No. 96. Q. Eight knots was the "Mangrove's" very best speed, was it not?

A. As far as I was able to judge.

No. 97. Q. How do you know that was her best speed?

A. Just from the fact that that was supposed to be her best speed, and we were certainly making the best speed about that time.

No. 98. Q. What was her ordinary speed?

A. Well, sometimes she would get down to six knots, but that
250 was due to the lack of men. When I took the ship I was not fitted out with anything, and I had to enlist practically all the men that I had. The admiral informed me that on account of the shortness of the complements of other ships, he could practically give me very few men. I succeeded in getting a few petty officers from other ships, but the bulk of the men were men that I enlisted in Key West, and I think the majority had formerly been in the service of the Treasury Department aboard of the "Mangrove;" and for them to be able to enlist in the Navy, they were discharged from the Light-House Service, and then enlisted in the Navy.

No. 99. Q. This crew would get up speed as promptly as a trained naval crew, would they?

A. Well, that would depend upon what their incentive was. When the "Panama" was sighted there was a good deal of zeal shown by the crew, and I recall a number of the men from the fire-room force who were off watch rushing down into the fire room to lend a hand, and I feel assured that the same zealous spirit animated the men on that occasion as was shown when we were in chase.

No. 100. Q. When you sent the boat over to the "Panama" you stopped. How long did it take to get under full speed?

A. I do not remember exactly, but I should say that we practically started off at full speed.

No. 101. Q. How far were you from the "Panama" at the time you sent the boat over there?

A. I should say probably 100 yards. I was as near to her as I thought two ships ought to be out on the open sea; and the tendency of two ships is to side towards each other. I naturally got as close to her as I could, with a desire to be within hail of her, and to be near in case of any resistance, and to save as much time and labor on the part of the crew of the boat that went to the "Panama" as possible.

No. 102. Q. How long did it take you to get the boat into the water?

A. I did not take the time, but it ought not to have taken
251 over a minute. She was hanging out on the davits, and everything was in readiness to lower her, and she was undoubtedly lowered just as soon as it was safe to do so.

No. 103. Q. Does that minute include the time for Ensign Dayton and the men to get into the boat also?

A. I can not recollect the exact circumstances in regard to that.

No. 104. Q. How long did it take to pull over to the other vessel?

A. Well, I should say at least five minutes.

No. 105. Q. What occurred when the boat got to the "Panama?"

A. She went alongside of the "Panama," and when the boat was seen by them they lowered a regular steamship gangway ladder—a ladder such as passengers are accommodated with—and immediately after landing Mr. Dayton the boat started back to the "Mangrove" and was hoisted.

No. 106. Q. Is it consistent with your recollection that the boat left before Ensign Dayton saw the captain?

A. My recollection is that the captain met him at the gangway at the head of the ladder.

No. 107. Q. It is hardly probable that he gave the order for the boat to return until he had met the captain and had some talk with him.

A. I am very sure that the captain met him at the gangway, and the boat came back almost immediately.

No. 108. Q. After the boat got back, how long did it take to get it aboard again?

A. I do not recollect, but I should say not more than two or three minutes.

No. 109. Q. How long after you got the boat on board did you start ahead?

A. My opinion is that we started immediately.

No. 110. Q. There was plenty of light at that time, was there?

A. For that purpose, yes.

No. 111. Q. Were you then on the opposite side of the "Panama" from the "Indiana?"

252 A. I do not know anything about the "Indiana;" she was not in sight.

No. 112. Q. You had seen the smoke?

A. Yes.

No. 113. Q. What did you see at that time in the direction of the "Indiana?"

A. Nothing but this smoke.

No. 114. Q. Not even the top of the "Indiana?"

A. No; I never saw the "Indiana" until I hailed her, after she fired the shot.

No. 115. Q. You did not use any spyglass at that time?

A. I think not.

No. 116. Q. Were you wearing your eyeglasses at that time?

A. I do not wear eyeglasses, except to read, or never have.

No. 117. Q. You do not use them for long distance, then?

A. No.

No. 118. Q. How long have you used glasses?

A. Since 1890.

No. 119. Q. Have you ever tested your sight for long distance by comparison with other people?

No. 120. A. Yes, I presume I have several times during my life. Being aboard ship, for instance, some one might say, "Look at that," and naturally you would compare sight in that way.

No. 121. Q. Did you compare your sight at all on board this vessel with that of your junior officers?

A. I did subsequent to the "Panama" expedition; i. e., just before I consulted the doctor, which, as I remember, was on June 6th, 1898. I found that my sight was not as good as it had been, and that there was a sudden change. But this was not the case on the 25th of April.

No. 122. Q. What led you to believe that there was something the matter with your sight at this time?

A. For instance, in getting my mail I could not read it as readily as I had been in the habit of doing; in particular, the case of the New York Sun, which I have subscribed for for several years, and which has a very fine print.

253 No. 123. Q. Had you noticed at that time the symptoms which you afterwards recognized as that of diabetes?

A. No; I did not know anything about the symptoms of diabetes. The first I learned of that was from the doctor's analysis of my urine on June 6th.

No. 124. Q. What did you and Chaplain Cassard talk about the evening of the capture?

A. I do not recollect having any conversation with Chaplain Cassard except when he came aboard and we started to Key West. I think I personally took him down into the cabin and showed him where he was to sleep. I told him I was sorry that I had no stateroom for him. That was all the conversation in the cabin, and the only other conversation was his voluntary remark, "That there was nothing within signal distance, and that the small ships would get the prizes," and I do not know whether I made any reply to that remark or not.

No. 125. Q. Now, are you certain that he said there were no vessels in signal distance?

A. I am very certain that he said that in effect.

No. 126. Q. What was the occasion for his volunteering that remark?

A. I do not know. He sat down in a chair just forward of the pilot house with his feet on the rail of the hurricane deck, thereby obstructing the passage from one side of the ship to the other. I asked him several times to excuse me. I do not know how long he kept that position, but I think he was about the deck most of the time. I had occasion to go down to my room in the cabin some time later, and he was sitting at the table eating his dinner. Mr. Dayton, Palmer, and myself messed together in the cabin, but I think none of us went down to dinner that night. It was a very busy time for Palmer and myself, and I know that I did not take dinner in the cabin, and I am quite confident that Mr. Palmer did not, as we were both on deck at the time of the cap-

254 ture, and remained there practically all the time until we got to Key West the next day.

No. 127. Q. Then you were not in the cabin at all during that evening?

A. Not that I recollect of. I went down to the water-closet, which was a part of the cabin—I undoubtedly did that. But only for a very brief stay.

No. 128. Q. While Chaplain Cassard was on deck, did you look at the compass at all?

A. I do not think that I did.

No. 129. Q. Did you have any compass bearings given to you?

A. Not that I recollect of. There was no call for me to look at the compass, and I do not think that I was on the bridge, where the compass was, during the whole night. I was, practically, all that night out on the hurricane deck, in the neighborhood of the pilot house.

No. 130. Q. Was there any order by you to Palmer, or anyone else on board, during the chase, to look out for other vessels?

A. No.

No. 131. Q. Whose duty was it to look out for other vessels?

A. It was the officer of the deck and the quartermaster's, both.

No. 132. Q. That would have been reported to you?

A. Yes.

No. 133. Q. Would it not have been the duty of any man on board who saw a vessel to make some report of it?

A. It is hardly customary. It would be probably under some circumstances.

No. 134. Q. Who was the quartermaster on duty?

A. I do not recollect.

No. 135. Q. Did you have a regular quartermaster, or was the duty performed by one of the men?

A. The duties of quartermaster were never performed by one of the men. My recollection is that it was one of the quartermasters that had been quartermaster aboard the "Mangrove" when she was in the Light-House Service.

255 No. 136. Q. Was one of the mates with you on the bridge during the chase?

A. I was not on the bridge. My recollection is that both mates were on deck; in fact, practically everybody except those in the engine room and fire room were on deck out of natural curiosity.

No. 137. Q. Have you any recollection of either of the mates coming up to Cadet Palmer and making any reports to him at that time?

A. I do not recollect it.

No. 138. Q. How large was the ensign of the "Panama?"

A. I could not give it in feet and inches, but it was the average-sized ensign carried by merchant steamers.

No. 139. Q. What was the comparison with the large flags used in signalling?

A. I should say it was smaller.

No. 140. Q. How much smaller?

A. That would depend upon the kind of flag; if you mean the large signal flags in use, it was not over half the size.

No. 141. Q. When you saw the "Indiana" after the shot was fired, was she displaying any lights?

A. My impression is that she was not.

No. 142. Q. You are not certain?

A. I think not. She might have had the night signal up, but my inference is that she had no lights.

No. 143. Q. Would she naturally have had a light when she was coming up to the "Mangrove" and the "Panama" under these circumstances?

A. If she saw the "Mangrove" she might. Those lights were only shown when meeting our own vessels, or any other vessel, to determine whether the other vessel was a friend or an enemy, and these signals were

changed every day. And, as I have said, they were only shown when two vessels came together, for the one to identify the other, the idea being that if the other ship did not respond with the proper signal, the inference was that she might be an enemy, and be fired into. And I am
256 reinforced in my belief that the "Indiana" was showing no lights from what I have just stated, and the fact that neither the "New York" nor the "Wilmington," or the torpedo boat that I met on my way to the "New York" with the "Panama" and the "Mangrove" displayed any lights at all. I was displaying lights to attract the commander in chief.

No. 144. Q. Would not the "Indiana" in going up to insure the capture of the "Panama" have displayed lights in order to inform the "Panama" of the approach of a vessel of superior force?

(Question objected to as to what the "Indiana" would have done.)

A. I should say not. Had I been the captain of the "Indiana" or any ship under these circumstances, I should have displayed no lights, except perhaps showing the night signal when close to her; but under the circumstances the "Panama" was evidently a stranger, from her being illuminated in the way she was.

No. 145. Q. You have estimated that you were 50 minutes moving from the time you stopped until the "Indiana" came up. Please state how you fix that time.

A. Well, that is my estimate from my recollection of the case.

No. 146. Q. I would like to have you state in detail, as well as you can, what you heard when Cadet Palmer instructed the men to scan the horizon for other vessels.

A. I do not recollect saying anything; I only recollect his giving some such order. I do not recollect hearing their replies to him, but I do recollect that he reported to me that there was nothing in sight.

No. 147. Q. During the time elapsing between your starting for the "Panama" and your stopping both the "Panama" and the "Mangrove" how much of the time were you on the deck and how much on the bridge?

A. I am not at all certain that I was on the bridge, but I was on the deck all the time. I am quite sure of that for this reason: When I changed my course to intercept the "Panama" I put sail on the ship—she carried a jib and foresail and a main trysail—and the foresail from the bridge would shut off about half the horizon, and standing on the hurricane deck you could see under the sail. And then again, as I
257 had gone to quarters I wanted to be near the guns, which, as I have stated before, were right forward of the brig, on the hurricane deck, down on the main deck; and I should not have been able to see the guns from the bridge, the edge of the hurricane deck intercepting the view.

Redirect examination by BENJAMIN MICOU:

No. 148. Q. In reference to this inquiry made by the counsel on the other side as to what lights were shown on the "Indiana" when you approached her, what was the custom in the fleet during the blockade down there as to ships showing lights at night?

A. The order was not to let any possible ray of light escape from any part of the ship. All of the air ports had inside shutters, and every precaution was taken to guard against any ray of light escaping. For

instance, when we were patrolling on the blockade off Habana we would meet our sister ships, and when we got within sight of each other we would make an exchange of this night signal that I speak of. The first one that made it, the other would answer the same way. I recollect on one occasion I was told by a captain of a ship that was associated with me on the blockade that I showed a slight ray of light one night, and I found that it was caused by a port shutter that had become loose, and the roll of the ship would spring it out and back, producing a small ray of light.

No. 149. Q. Do you remember which way the wind was blowing at the time of the capture, in reference to the smoke of the "Indiana?"

A. No; but I can tell in another way. When I was heading for Key West, which was very near north, the wind would not permit the carrying of fore-and-aft sails, which can be carried within from 4 to 5 points of the direction of the wind; and when I changed the course to intercept the "Panama" I had a fair wind, and that was why I made sail to increase the speed of the ship; and from these circumstances I should say the wind was about northwest.

No. 150. Q. Which way would a northwest wind have blown the flag of the "Panama," as regards the direction of the smoke of the "Indiana?"

A. Wind blowing from the northwestward would blow the flag out so that a vessel to the southwestward would have a line of sight on that flag at right angles to the way in which it was blowing—in other words, would have practically a broadside view of the flag.

258 No. 151. Q. At the time that this shot was fired by the "Indiana" across the bow of the "Panama," you stated, did you not, that it was about twilight?

A. Yes; it was late twilight, or dark; I should say more dark than twilight.

No. 152. Q. How long is twilight, as a rule, in that latitude?

A. In the Tropics the nearer you get to the equator the shorter the twilight is. Near the equator there is practically no twilight.

No. 153. Q. How far, at the time of that gunshot, could you have probably seen ahead of you on the water, under the conditions of darkness that prevailed?

A. As I recollect the conditions then, I should say not more than a mile or so, if the ship showed no lights.

WILLIAM H. EVERETT.

Sworn to and subscribed before me this 29th day of August, 1901.

[SEAL.] CHARLES H. SIMONDS, Jr.,
Notary Public.

259 COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss:

On this 29th day of August, A. D. 1901, before me, Charles H. Simonds, jr., a notary public, duly commissioned and qualified for the Commonwealth of Massachusetts, personally appeared William H. Everett, who, being duly sworn, declared that the annexed statement by him subscribed is true to the best of his knowledge and belief.

In testimony whereof I have hereunto set my hand and affixed my seal of office the day and year above written.

[SEAL.] CHARLES H. SIMONDS, Jr.,
Notary Public.

260 Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
vs.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," "Indiana," and "Wilmington," appellants,
vs.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

WASHINGTON, DISTRICT OF COLUMBIA, *ss:*

On this 23rd day of September, 1901, personally appeared before me, Charles R. Harban, a notary public in and for the aforesaid District of Columbia, and by consent of parties acting as commissioner in the aforementioned cases, Leigh Carlyle Palmer, upon call of the officers and crew of the U. S. S. "Mangrove," who first by me being duly sworn to speak the truth, the whole truth, and nothing but the truth, was thereupon examined by Benjamin Micou, esq., for the officers and crew of the U. S. S. "Mangrove," and by William B. King, esq., for the officers and men of the U. S. S. "Indiana" and the U. S. S. "Wilmington," and by Jos. K. McCammon, esq., for the officers and men of the U. S. S. "New York." The questions and answers hereinafter appearing were duly taken down in shorthand by a disinterested amanuensis, Emma F. L. Smith, agreed upon by the counsel for the parties aforesaid, and by her reduced to writing, and after being so reduced the same was read over by the said Leigh Carlyle Palmer and subscribed to by him.

261 LEIGH C. PALMER, being duly sworn, deposes and says:

Direct examination by Mr. MICOU:

Question 1. State your full name, age, occupation, and present duties.

A. Leigh Carlyle Palmer; ensign, U. S. Navy; age, 28 years; at present undergoing examination in Washington.

Question 2. What duty were you on in April, the 25th, 1898?

A. I was on duty as navigating officer of the "Mangrove," off Havana.

Question 3. State what occurred that day in connection with the capture of the "Panama."

A. Some time after 4 o'clock on the afternoon we received signal from the "Indiana" to come within hail. We took on board Chaplain Cassard and an enlisted man; and about 4.30 started on our way to Key West. About 5.30 sighted a strange vessel on the starboard bow, and headed for her. We fired two shots across her bow, to heave her to, and then lowered a boat. She started ahead again, and we fired the third shot. Ensign Dayton then went on board as prize master. When the boat left the "Panama," returning to the "Mangrove," Commander Everett turned to me and said: "Log the capture of the 'Panama' now; it is 6.07 p. m." We then hoisted the boat and proceeded immediately towards the position, indicated by the smoke, in which we supposed the

squadron was. Chaplain Cassard, as soon as Lieutenant Dayton was on board the "Panama," turned to Commander Everett and said: "Captain, I congratulate you on capturing such a large prize with such a small ship. It will be a neat sum for you, as there seems to be nothing else in sight," or words to that effect. I then turned around to look and
262 see if any other ships were in sight, but did not see any. I saw the smoke of what I supposed to be the "Indiana," which we had left an hour and a half before, about. I then directed the mates and the apothecary to look well around with their glasses to see what other vessels might be in sight. They reported to me that they could see nothing of any vessels, but smoke to the southward and westward; and I so entered it in the log. We were very much afraid that we would lose the position of the squadron before dark, so we got up all steam possible and headed in the direction of the smoke. About a quarter before seven we ran into the "Indiana," which we had seen when she was some six miles away. When the "Indiana" was about a mile and a half from us, and from the "Panama," she fired a shot across the "Panama's" bow, as near as I could judge. I did not see the smoke, as it was too dark; I saw only the flash of a gun, and heard the report. The "Indiana" was then barely visible, as it was getting very dark. Captain Everett immediately steamed up to the position of the "Indiana" and informed Captain Taylor that he had captured this prize. Captain Taylor said: "What is she?" Captain Everett replied: "The 'Panama,' from Barcelona, a Spanish vessel," or words to that effect. Captain Taylor said: "I congratulate you, Everett;" and then the crew of the "Indiana" cheered the "Mangrove." We then proceeded to the position of the flagship. We were ordered from her to take our prize to Key West.

Question 4. How long was Chaplain Cassard a passenger on the "Mangrove?"

A. From about 4.15 p. m. April 25 until noon of the following day; I am not sure about the time.

Question 5. Whose duty was it aboard the "Mangrove" to take compass bearings?

262½ A. It was my duty, as navigating officer.

Question 6. Did you take any bearings in the presence of Chaplain Cassard and Captain Everett?

A. I did not. I set my course for Key West as soon as I left the "Indiana," and as there were no objects forward of the beam or any place easily seen from the compass on the bridge, I took no bearings.

Question 7. Chaplain Cassard stated, in substance, that he noticed when compass bearings were being read, that when Captain Everett was reading compass bearings, that he had to call upon the officer to read them to him because of the condition of his eyes. Did anything at all occur in the way of reading compass bearings by you, before Chaplain Cassard, to Captain Everett?

A. Nothing at all of that nature occurred. The captain does not read the compass bearings himself, as he has subordinates for that purpose. No bearings were taken, but I would have taken all bearings, and they would have been reported to him.

Question 8. Did you report to Captain Everett, or did any officer under you report to him, through you, that the "Indiana" was in sight,

and Captain Everett replied that that was not the direction for the "Indiana" and could not be the "Indiana?"

A. No; there was no report of any vessel in sight. The only report was when I directed the mates to look for ships. They reported they could see none, but could see some smoke to the southward and westward.

Question 9. You speak of seeing smoke of the squadron to the southward and westward. How much smoke did you see—the smoke of how many vessels?

263 A. I could not tell that. It was at a great distance, and I could just tell that there was smoke in that direction, and I knew that the squadron, or some of the ships of the squadron, had continued in that direction.

Question 10. Did the smoke come from one place, or several places?

A. The smoke came from one place.

Question 11. How did you happen to look just at that time to see if there were other vessels?

A. As soon as Chaplain Cassard remarked to Captain Everett that, as there seemed to be no ships in sight, we would make quite a neat little thing out of the capture, or words to that effect, I looked around to see if there were any ships in sight, and ordered the men to do the same, with glasses. The mate, Cosgrove, went up on the bridge and looked all around the horizon with glasses, and then reported to me that there was nothing in sight, except smoke to the southward and westward.

Question 12. After you left the "Indiana," having gotten the prize crew from her, and having been ordered to report to the flagship, how long was it before you met the flagship?

A. I have no distinct recollection. I think we met the "Wilmington" first, and she pointed out to us the direction of the flagship. I was very busy with the conning of the ship and could not state how much time elapsed.

Question 13. How long had you probably steamed towards the "Indiana," after the "Panama" and "Mangrove" got under way and steamed in the direction of this smoke, before you saw the "Indiana?"

A. I think about 20 minutes. I judged her then to be about six miles distant.

264 Question 14. At the time the "Indiana" fired the shot across the "Panama" could you see the "Indiana" distinctly?

A. I could not. I could make out her position in the gloom against the sky; it was after dark.

Question 15. How near was the "Mangrove" to the "Panama" at the time that the "Indiana" fired across the "Panama?"

A. A little abaft the port beam of the "Panama."

Question 16. What direction was the "Panama" going at that time as regards the "Indiana?"

A. The "Panama" was heading towards the "Indiana."

Question 17. Was there any turn made by the "Panama" or anything done at that time to indicate that the vessel was going to escape from the "Mangrove?"

A. Nothing at all. We were very close to her, and Ensign Dayton had orders to proceed directly to the "Indiana."

Question 18. Was the flag of the "Panama" flying at that time?

A. It was.

Question 19. What was the custom during the war with Spain as to captured merchant vessels lowering their flags after capture?

A. The flags were to be kept hoisted by the prize master until the vessel had been condemned. The "Panama" kept her flag hoisted, and it was hoisted in Key West for two or three days thereafter whenever I saw her.

Question 20. What experience have you had with signals—making signals and reading signals—since you have been in the Navy?

A. I was for two years signal officer on the flagship "New York" under Admirals Bunce and Sicard. I was signal officer after that on the "Mangrove" and have been signal officer since at various times for the last three years.

Question 21. What, in your opinion, is the maximum distance at which flag signals can be read under the most favorable circumstances?

365 A. From four and a half to five miles under the most favorable circumstances.

Question 22. What would you term as the most favorable time for reading signals during the day?

A. I should say near noon, when there is most light, as everything depends upon distinguishing the colors in the flags.

Question 23. What were the actual conditions for reading signals on the afternoon of the capture of the "Panama," from six o'clock on?

A. The conditions were fairly good for that time of day, but it is very hard to read signals about sunset, as the light is generally not good.

Question 24. What is the Spanish flag—its colors?

A. Red and yellow; red at top and on the bottom and yellow in the middle—three horizontal stripes.

Question 25. What are the colors on signal flags?

A. Red, yellow, blue, and white.

Question 26. What, if any, would have been the advantages in favor of reading the signal flags on the "Mangrove" and making out the Spanish flag on the "Panama" when the vessels were alongside of each other?

A. The advantage would all be for distinguishing the Spanish flag.

Question 27. Why?

A. Because its colors are the easiest to be read of all the signal colors. The Spanish flag was hoisted at the gaff of the mizzen at a much higher position than the flags would have been hoisted on the "Mangrove." The "Panama" was a ship that was very well kept and her bunting would probably be of the newest, while the flag signals of the "Mangrove" had to be kept out for continual use during the war.

266 Question 28. What signals are used in the Navy by guns?

A. There is provision for a gun signal for anchoring vessels in a fog, mist, or falling snow, considered a time of extreme urgency, according to the signal book. I have never heard of gun signals used at any other times, nor would they be practicable. The only time when they could be used would not be as a signal, but simply to call attention when all other means had failed.

Question 29. In cross-question 20 to Gunner Mallery, I asked him: "Well, you read these signals by the sound, not by the flash from the

guns?" referring to gun signals, and he answered: "It depends upon the weather; in thick or heavy weather we would have to depend upon the sound, at other times by the flash." Is there any system of reading gun signals by the flash?

A. There is none; nor could it be done, as ships when signalling are always changing position. The official signal book provides for the gun signal I referred to as a sound signal only, and it is under the list of sound signals, and is not referred to under sight or any other signals.

Question 30. How far, in your opinion, under favorable circumstances, could a small boat, such as the one that went from the "Mangrove" to the "Panama," be seen with the naked eye?

A. I have seen boats of that size repeatedly in races between ships, at five miles distant from the starting point. It is easy to distinguish them, especially from some elevated place, as they form such a decided contrast to the large surface of the surrounding water. At five miles one could distinguish the boat belonging to each ship, or rather, could distinguish one boat from the other, knowing the boats of the ships. With the glass you could probably see at a much greater distance.

267 Question 31. How far, in your opinion, can you see the smoke from a gun at sea?

A. About ten miles. It depends upon the size of the gun.

Question 32. What is the first thing you generally see when looking at a boat in the distance?

A. If it has any occupant, you will always see the occupant first. Boats are often mistaken for buoys, fishing boats, where one man is in a boat fishing, as you see only the black object—the figure of the man—long before you can see the boat itself, as it is so much like the surrounding water and is very low.

Question 33. In your opinion, can you read a flag signal as far as you can see a boat or the smoke of a gun?

A. You can not. Flag signals can not be read beyond five miles, under the most favorable circumstances, and with a glass you might see a boat nine miles, or see the smoke of a gun ten miles, or maybe over.

Question 34. In answer to cross-question 35, Gunner Mallery, when asked from which side of the ship he saw the gun of the "Mangrove" fired, stated: "On the port side, I think." Where was the port side in regard to the direction of the "Indiana?"

A. It was the farthest side away from the "Indiana;" we had our starboard side to the "Indiana," and he could not have seen the flash from the port gun.

Question 35. Have you seen the diagram that is marked as attached to Gunner Mallery's deposition, showing the positions of the vessels?

A. I have not.

(It is agreed by counsel that this exhibit, still remaining in the hands of the commissioner by whom the deposition was taken, is not available for exhibition at this time.)

268 Question 36. How long did it take the "Mangrove," after she had stopped when Ensign Dayton was sent aboard the "Panama," to get under steam again?

A. It did not take more than three minutes. We made as much haste as possible, as we wanted to get down with the squadron before darkness

came on and hid the ships from our view, if we were even close to them. We therefore made all possible speed towards the smoke that we believed to mark the "Indiana's" position.

Question 37. What did you consider was the speed of the "Mangrove" after she got underway going towards the "Indiana?"

A. Eight knots would be a fair estimate; she could not have gone less than that, as we pushed her to the utmost.

Question 38. When a vessel stops and then gets underway again, what has to be done?

A. Simply going ahead at full speed with the engines, and the vessel reaches her maximum speed as soon as she can overcome the resistance of the water. I have been stationed on the "Indiana" and know that it takes her four or five minutes to attain her maximum speed.

Question 39. Does the length of time that a vessel stops have anything to do with the length of time that it takes to get her started under full speed again?

A. It does; for if a vessel is going to stop for two or three hours the fires will be allowed to die a little, but if only stopped for half an hour or so the fires will be kept bright and the steam at its full pressure, so as to be able to get underway under the most favorable conditions.

Question 40. In the case of such a vessel as the "Indiana," if stopped only for a few minutes, how long would it take to get her underway again?

269 A. It would only take her four or five minutes at the most to get full speed; she could get underway immediately, but would not attain her full speed for four or five minutes.

Question 41. Is the speed of a vessel that it is capable of maintaining for a day or so at a time less or greater than what she is capable of attaining for a short chase?

A. A vessel may make an average of ten knots, be able to maintain that for a day or two, and in case of a chase, or of any other urgent cause, she can make from two to three knots more for a period of a few hours.

Question 42. During the war with Spain did you remain on the "Mangrove?" How long did you remain on the "Mangrove?"

A. I left her three days after she arrived at Key West and went to the "New York."

Question 43. How long did you remain on the "New York?"

A. I remained on the "New York" until May, 1899.

Question 44. What do you know of the speed that the "Indiana" was capable of during that campaign?

A. I was in Cuba with the "Indiana" and for two years on the North Atlantic Station, when the speeds of all vessels were tabulated and observed daily from the flagship where I was. During the war I was with her, or in Cuba with her most of the time, as I was on the "New York," with the exception of a few days on the "Mangrove." At the close of the war, I think August 20 or September 20, whenever the ships made that last trip to New York—that is, the heavy fighting ships—the "Indiana" was one of that number. They made the trip to New York in about five days. The speed of the squadron was ten knots, as we were due to arrive in New York Harbor on a certain day. After run-

270 ning for two or three days at that speed the "Indiana" signalled, "We can not maintain the present speed." The flagship then sig-

nalled, "Make the best of your way to New York," and the squadron proceeded. The flagship, as soon as she made this signal to the "Indiana," made signal to the squadron to increase the speed from one-half to one knot, and we maintained this increased speed until we reached New York. Much to our surprise, the "Indiana" did not drop behind, and not only kept up the original speed, but maintained her position with the increased speed under which we reached New York.

Question 45. Do you know anything of the way that flags are kept aboard merchant vessels, as to their condition of cleanliness?

A. I do. They are preserved very carefully in the chart house, except when in use. A merchant vessel on leaving or entering port, or communicating with any vessels at sea, generally hoists a flag that can be easily distinguished from its size, and a flag of which they are not ashamed—that is, a new flag, a flag in good condition. In port, if they are going to stay some length of time, they generally haul this down and substitute a smaller flag. The flag of a vessel like the "Panama," which was very well kept, would very probably be a flag made of new bunting and carefully kept away from the weather.

Question 46. How are flags kept for signal purposes on a man-of-war?

A. For signal purposes they are kept on the upper bridge or in some place in a special receptacle for each flag. That is for the purpose of making them easier to get at, as if they are not in separate boxes or bags we would have to open out each flag to know what its number was. These flags of the ships during the war were kept in the open air, so that there would not be the slightest delay in making signals, as sig-
271 nals were continually called for during the day. These flags, of course, became very much abused after a few weeks in such rough service.

Question 47. Which is the more difficult to make out, the colors from the signal flags or the colors from one flag, or an ensign?

A. An ensign is much more readily made out than a system of signal flags, for the reason that the signal flags are generally made in hoists of four, and there is just that much more bunting and that additional number of colors to observe; whereas in a flag like the Spanish flag we have the two best colors, and the flag is hoisted alone and in a conspicuous place, like the gaff of a vessel. Signal flags are often blanketed by the masts or the superstructure of the ship—if not the top one, then the bottom one, or either of the middle ones; whereas a vessel's ensign at the mizzen gaff is clear of almost everything, and should be distinguished several miles farther than any signal flags. I have repeatedly attempted to read signals from my vessel, the "Kentucky," stationed at Cavite, when foreign merchant vessels were proceeding to Manila. In this case they had to pass from three to four miles, maybe more, from the "Kentucky," and you could readily make out that they had flags, but you could not distinguish the colors at that distance, except under the most favorable circumstances. All the quartermasters and signal boys on the "Kentucky" have been exercised at this rate, to see how far signals can be read readily.

Question 48. Was the position on the "Mangrove" from which to display signal flags higher or lower from the water than the position occupied by the Spanish flag on the "Panama?"

A. It was lower—lower for the uppermost flag and very much lower for the farthest flag in the hoist. Besides, the "Mangrove" was
272 not furnished with the usual set of signal flags, 8 feet x 11, about; it was furnished with boat flags only, which are about 3 x 4 feet.

Question 49. Were none of these larger flags on the "Mangrove?"

A. The "Mangrove" had no flags but boat flags, 3 x 4 feet, with the exception of our ensigns. None of the signal flags were larger than 3 x 4 feet, approximately. I am speaking of the square flags; the pennants are narrower and may be a little longer than 4 feet, but do not present as good an object for the eye as the square flags.

Question 50. Are ensigns used for signalling at all?

A. They are not, except in the merchant service; in the navy they are not used at all; it is against orders to use an ensign except as the colors of the ship.

Question 51. In your experience as a signal officer, when one vessel was signalled to to make out the colors of an approaching vessel, and it was not close enough to make out those colors, and there was some other vessel of the squadron that was nearer to the approaching vessel, what was the custom as to inquiring of the nearer vessel as to what colors the approaching vessel carried?

A. The nearer vessel, if she could not see the colors, would make signal to a vessel still nearer to the vessel of which the colors were required. It is always the custom in the service in case of interrogatories of that kind from the flagship for the vessel to make all possible inquiries; if she can not see from her position, then to signal to some other vessel that is nearer, and report the same to the flagship. It is the custom for vessels in favorable positions for seeing things to report even the usual daily occurrences, such as mail steamers entering or being sighted
273 at sea, or land, or light-houses being sighted, without any order from the commander in chief. In fact, it would be regarded as a breach of duty not to ascertain and report these things, by whatever method possible, without any direct order.

Question 52. When a vessel is in pursuit of a prize, is there anything in the making of signals to another vessel that might be nearer the prize that would delay the pursuit at all, and that would occasion delay to make such an inquiry?

A. Not the slightest; the making of signals is especially arranged that there shall be no delay in the speed of the ship; there is not the slightest cause.

Cross-examination by Mr. KING:

Cross-q. 1. Do you remember how well kept and clean the Spanish flag on the "Panama" was?

A. I remember that it was distinctly visible and easily visible, which it would not have been if not well kept.

Cross-q. 2. Was the Spanish flag flying on the "Panama" when you first saw the vessel?

A. Yes.

Cross-q. 3. And presumably had been flying ever since she left New York?

A. No; merchant vessels nor naval vessels do not fly their flags at sea;

they fly them only on entering or leaving the port, or falling in with some other ship.

Cross-q. 4. What was the occasion for the "Panama" to have her flag up when you saw her?

A. Falling in with us; she evidently saw us. It is the custom when falling in with any other vessel to hoist the flag.

Cross-q. 5. How large a flag was that on the "Panama"?

274 A. I should say it was about 10 x 12.

Cross-q. 6. What other gun signals are provided for in the signal book beyond these that you have already described?

A. None besides these I have described.

Cross-q. 7. The firing of a gun could be used to call attention to the need of another vessel, could it not?

A. It could, but it is not allowed for in the signal book. There is an international rule of the road for all vessels for firing minute guns in case of distress, and no other signal can be made.

Cross-q. 8. What can be seen of the smoke of a gun firing at sea at a distance of ten miles?

A. At a distance of ten miles you can see the volume of smoke as it rolls out from the gun; that is, like a small bank of white, cirro-cumulus cloud.

Cross-q. 9. Would that be true of a 6-pounder?

A. Yes, but not at a greater distance than ten miles.

Cross-q. 10. Could you see the flash?

A. You could not.

Cross-q. 11. How near could you, in your opinion, see the flash from the ship?

A. I do not think you could see the flash within six miles; I have never measured.

Cross-q. 12. Have you ever made any experiments at ascertainable distances, in regard to seeing smoke from 6-pounders, or other guns?

A. I have made experiments of ascertaining distances on the sea of objects. I have made experiments of seeing smoke from vessels firing at the regular target practice, in 1896 and 1897, in the northern drill grounds at New York. I have seen guns of Spanish make, about the calibre

275 of 6-pounders, fired off Aguidores, at about that distance. On the day of the battle of Santiago, when the flagship turned I believe it was officially decided that she was seven miles away. The reason for her turn was that we saw the smoke of the guns of the vessels that were firing as they issued from Santiago and turned to the westward.

Cross-q. 13. You have described how the smoke would look that came from a gun at the distance of ten miles; can you tell what, if any, changes in the exact appearance of the smoke would occur as you approach nearer to it?

A. If you were very near, you might see the direction of the smoke.

Cross-examination by Judge McCAMMON:

Cross-q. 14. How long were you alongside the "Indiana" after the capture of the "Panama?"

A. I have no distinct recollection, but think about half an hour, as we put a prize crew aboard the "Panama."

Cross-q. 15. Then you immediately went to pick up the "New York?"

A. We started to pick her up, but we did not know where she was. The "Wilmington" came along and informed us.

Cross-q. 16. How long did it take you to pick up the "New York?"

A. I do not know. We had a great deal of difficulty in finding her in the dark, as none of the vessels knew her.

(It is agreed that if Mr. Hayden desires to cross-examine the witness, itmay be done by written interrogatories.)

Cross-examination by Mr. KING, continued:

Cross-q. 17. These observations, which you have made as to large guns, are not of such small guns as 6-pounders, are they?

276 A. They were observations of both classes of guns; 6-pounders, I know, because they were fired from such ships as the "Indiana" and "Massachusetts," which have only the 6-pounder guns elevated on a superstructure.

Cross-q. 18. Is it not a fact that an object can be seen more plainly in the afternoon by the reflection of the light from the sun lower in the horizon than it can be seen at noonday?

A. No; except in one case, and that is when the star Venus appears, then there is not enough sunlight to blanket its light, and it may be seen in the day; but terrestrial objects are not nearly so distinct, nor could the colors be so easily read as when the sun is higher, at noon.

Cross-q. 19. Then you mean to give it as your positive opinion that you get no advantage in viewing terrestrial objects in the late afternoon from the reflection of the rays of the sun low down against the object at which you are looking?

A. Certainly not; if the sun were back of the object you might make out the shape of the object much more distinctly; that is the only case. It is simply based on the theory of light.

Cross-q. 20. Now, might not the "Mangrove" have been going more than eight knots an hour when she was going with the "Panama" towards the "Indiana?"

A. She was making her best speed; it might have been a little more than eight knots, I think not much more; she was doing her best, as we had ordered the "Panama" to accommodate her speed to ours.

Cross-q. 21. How long were you on the "Mangrove?"

A. I was on the "Mangrove" for about two or three weeks, I think, and when she first started into commission in the Navy.

Cross-q. 22. What other officers were on her during that time, besides yourself?

277 A. Lieutenant-Commander Everett, Ensign Dayton, and two mates, Peterson and Cosgrove, though they were not commissioned officers.

Cross-q. 23. How long had you been at sea at that time on United States war vessels?

A. I had been at sea three months yearly for four years, and just prior to this affair continuously for two years, lacking a month.

Cross-q. 24. When you were examined on the 12th of May, 1898, in this case, why did you say nothing then about Mr. Cassard's statement, to which you now testify?

A. There was no occasion for making any remark; there was no discussion as to whether the "Indiana" was in signal distance until we got

there; it seemed sufficient to state the other facts in the case; we were not examined very thoroughly; it was done as briefly as possible, as I was then on duty on another ship and had very little time.

Cross-q. 25. If there was no discussion at that time as to whether the "Indiana" was in signal distance, why is it that it appears in your deposition?

A. The reason it appears in my deposition is because Chaplain Cassard made this remark to Captain Everett, saying that there seemed to be no other ships in sight. Then I ordered the horizon to be scanned and made a note in the log, that no other ships were in sight.

Cross-q. 26. In your former deposition on May 12, 1898, you mentioned your entry of the hour in the ship's log book, and your command to the first and second mates and the apothecary to scan the horizon for all ships; you also referred to the "Indiana" in about ten other places.

Did you not know at that time that the question of the presence
278 of the "Indiana" was one of vital importance in the case in which you were then being examined?

A. Probably I did; now since you call it to my attention.

Cross-q. 27. Then why did you not think it necessary then to mention the very statement of Chaplain Cassard which you now say led you to give the order to scan the horizon?

A. The statement of Chaplain Cassard at that time did not strike me as a very vital one; I considered him as a member of our ship's company; the fact that I ordered the men to look around to see if there were other ships, though, would strike me as a very pertinent statement at that time.

Cross-q. 28. When did you first mention this statement of Chaplain Cassard to anyone?

A. I think I must have mentioned it when we first heard that Chaplain Cassard had testified that he thought the "Indiana" could participate in the prize.

Cross-q. 29. To whom did you mention it first?

A. I am not sure; very probably to the man who first told me of his testimony. It may have been Captain Everett, or it may have been Lieutenant Dayton, or any other officer who told me of this fact.

Cross-q. 30. How many times in all have you mentioned that to other people?

A. Well, I have no record of the times; several, I should say. I mentioned it to Mr. Micou.

Cross-q. 31. But you can not state positively the name of anyone, aside from the statement to Mr. Micou?

A. I have stated it to Mr. Micou, and I believe I have stated it in a letter to Captain Everett; and I may have stated it to five or six officers on any ship I may have been on, when discussing the question of the war and the capture of prizes.

279 Cross-q. 32. But you can not state the name of any such officer?

A. Very probably Captain Everett. I am pretty sure I stated it to him, and stated it to Mr. Micou. I may have stated it to Mr. Dayton, as we discussed this thing very often; I very probably stated it to a half dozen or more officers in connection with the discussion of the case.

Cross-q. 33. In your direct examination, in stating what Chaplain Cassard said you stated that you gave the conversation as according to your present recollection—that they were words to that effect?

A. Yes.

Cross-q. 34. Will you please state as closely and accurately as you can just what it was that Chaplain Cassard said?

A. To the best of my recollection it was: "I congratulate you, Captain Everett, on capturing such a big prize with such a little ship. You will have a pretty neat thing out of it, as there seems to be nothing else in sight." That is as near as I can recollect it.

Cross-q. 35. Now, can you, at this late date, swear positively that the last statement, "as there seems to be nothing else in sight," was not merely an inference of yours of what he said, instead of being the exact statement of his words, or the effect of it?

A. Yes; and I am further assured of this, that it was those words that caused me to give the order to the men to scan the horizon.

Cross-q. 36. Did you scan the horizon yourself, with glasses, at the time?

A. I did.

Cross-q. 37. Please state exactly what you saw in the direction of the "Indiana?"

A. I saw smoke rising as one might see it from a bonfire, or a ship at sea.

280 Cross-q. 38. Could not you see anything which could be described as the towers of a ship?

A. I could not at that distance. You can very often see smoke before even the upper part of the masts could be seen, when the ship is clearly below the horizon, on a clear day.

Cross-q. 39. Was not the "Panama" between you and that smoke?

A. The "Panama" was on the other side, away from the "Mangrove." The "Mangrove" was between the "Indiana" and the "Panama."

Cross-q. 40. When you started in pursuit of the "Panama," did you see any other vessels?

A. No other vessels except the "Panama."

Cross-q. 41. And at any time during that chase did you see any other vessels?

A. I did not.

Cross-q. 42. Did you make any effort to see them?

A. I did not. During the chase I was busily engaged in it and paid no attention to anything outside of my immediate duties. I did not get a chance to look around the horizon until Lieut. Dayton was on board the "Panama."

Cross-q. 43. Was it not the duty of some one on board ship to see if any other vessels were in sight?

A. It is not, further than the general duties of the lookout at sea. The lookout is generally stationed to report any vessels, or rocks, or land, or light-houses, or things of that kind. If such had been the case the quartermaster should have reported it to me.

Cross-q. 44. And can not you recall that during the chase one of the mates did make a report in regard to other vessels?

A. I am sure no reports were made in regard to other vessels, for if

there had been I would have been particularly eager to know, as we were not sure of the character of the "Panama."

281 Cross-q. 45. How did you know that the hour that Ensign Dayton went on board was 6.07?

A. Captain Everett was very particular about having items entered in the log. He turned to me and said: "Dayton is aboard; put that in the log; it is 6.07," or words to that effect.

Cross-q. 46. Did you look at any timepiece yourself?

A. I did. It was just 6.07 by the pilot-house clock.

Cross-q. 47. Was it 6.07 when Dayton went aboard or 6.07 when the boat came back from the "Panama"?

A. It was 6.07 when the boat left the gangway, as we were not sure, until it left the gangway, that Dayton was all right.

Cross-q. 48. Did you get any word or signal from Dayton after he got on board before you steamed ahead?

A. I am not positive. I think he hailed us—no, not before we steamed ahead. I think he hailed us just after we started ahead to know what direction to take.

Cross-q. 49. Who remained on board the "Panama" with Dayton?

A. Dayton was aboard by himself. We sent only one boarding officer.

Cross-q. 50. How far were you from the "Panama" when you sent this boat to board her?

A. Very close; within a hundred yards, and I think we came a little closer, as we were lying near the ship.

Cross-q. 51. Did Dayton send the boat off from the "Panama" as soon as he stepped on the gangway of the "Panama?"

A. I think the captain of the "Panama" was there to meet him on the gangway and that Dayton sent the boat back immediately.

Cross-q. 52. You are not sure about that?

A. I am not sure. I know that the boat left the gangway, at

282 any rate, less than a minute after it had landed at the gangway.

Cross-q. 53. I understand you to have stated in the direct examination that you saw the "Indiana" when she was about six miles away. What was the first appearance of the "Indiana" when you saw her coming up?

A. I think the first thing I saw was her fighting top.

Cross-q. 54. How long after you started was it, probably, when you saw her?

A. I think about twenty minutes after we started.

Cross-q. 55. Who first saw the "Indiana," or made a report of it either to you or to Captain Everett?

A. I do not think any report was made to Captain Everett. I think I probably saw it as soon as anyone. Captain Everett was very busy hailing the "Panama" at that time, and there was a great deal of attention on the "Panama," hailing and receiving replies from Dayton.

Cross-q. 56. How long was it from the time that Dayton boarded the "Panama" before the "Indiana" came up?

A. I think it was about a quarter of seven when the "Indiana" came, and Dayton boarded the "Panama at 6.07.

Cross-q. 57. Did you see the "Indiana," then, continuously from the time you first saw her until she came up?

A. I did, whenever I looked in that direction. She was growing dimmer all the time, as it was getting darker.

Cross-q. 58. How far away was the "Indiana" when she fired the gun at the "Panama?"

A. I should say about a mile away.

Cross-q. 59. Have you any personal knowledge of the condition of the engines of the "Indiana" at this time?

A. If we are not on board a ship we judge the engines from what we can see of the speed. I was not in the engine room within two
283 months of that time, but judging from her general condition and the way she was moving on the station, as I had seen her for several days, I judged that the engines were in a fair condition.

Cross-q. 60. What is your judgment as to the rate of speed at which the "Indiana" approached you between 6.07 and 6.45?

A. I should say, under the conditions, that she would be making her best speed as she was joining in the chase. That would probably be twelve knots, as she could make ten knots on an average, according to her officers' statement.

Redirect examination by Mr. MICOU:

Red. q. 1. You were asked in the cross-examination whether it was not the duty of some one to look out for other vessels in sight and report. It was as much the duty of that person to report as to look out, was it not?

A. The duties are combined—look out and make the report.

Red. q. 2. To whom would that report have been made?

A. It would have been made to me or to Commander Everett.

Red. q. 3. You spoke of Mates Peterson and Cosgrove. Do you know where they are now?

A. I do not.

Red. q. 4. Were they men from the Light-House Service or from the regular service?

A. They were men from the Light-House Service and not from the regular service.

Red. q. 5. After you went back to the "New York," had the "Indiana" been continuously with that squadron up to the time you speak of, when you started to New York?

A. She had been on the northern coast and on the southern coast of Cuba.

Red. q. 6. Had there been any opportunity to repair her engines
284 between the time of this chase of the "Panama" and the time that you speak of her making the ten knots on the way home?

A. There could have been no repairs, except very minor ones, which would not have affected her speed. We had no repairing facilities of any magnitude sufficient for such a ship as the "Indiana" on that station.

Red. q. 7. You speak of the hour 6.07 having been taken as the boat was leaving the gangway. The gangway of which ship did you have reference to?

A. The gangway of the "Panama."

Red. q. 8. If a vessel the size of the "Indiana" had been anyway from five to six miles of the "Mangrove" at the time of the capture, could she have been seen distinctly?

A. She could. It would have been easy to distinguish her at that distance.

Recross-examination by Mr. KING:

Recross-q. 1. There is no doubt in your mind that if the "Indiana" could see the "Mangrove," the "Mangrove" could see the "Indiana" at the same distance?

A. Not the slightest.

LEIGH C. PALMER, *Ensign, U. S. N.*

Sworn to and subscribed before me this 23rd day of September, 1901.

[SEAL.] CHARLES R. HARBAN,
Notary Public.

285 Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
vs.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," "Indiana," and "Wilmington," appellants,
vs.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

NORFOLK COUNTY, VIRGINIA, *ss.:*

On this 31st day of October, 1901, personally appeared before me, John W. Sullivan, a notary public in the city of Portsmouth, Virginia, and acting as such in the county of Norfolk, Virginia, and by consent of parties acting as commissioner in the aforementioned cases, John Havens Dayton, upon call of the officers and crew of the U. S. S. "Mangrove," who first by me being duly sworn to speak to truth, the whole truth, and nothing but the truth, was thereupon examined by Benjamin Micou, esq., for the officers and crew of the U. S. S. "Mangrove," and by William B. King, esq., for the officers and men of the U. S. S. "Indiana." The questions and answers hereinafter appearing were duly taken down in shorthand by a disinterested amanuensis, John Edward Bibb, agreed upon by the counsel for the parties aforesaid, and by him reduced to writing, and after being so reduced, the same was read over by the said John Havens Dayton and subscribed to by him.

286 (Whereas the time for taking of this deposition was fixed by counsel for the "Mangrove" and "Indiana," but notice was not given to Messrs. McCammon & Hayden, counsel for the "New York," until October 30, 1901, in consequence of which they are not able to be present, this deposition is taken with the express understanding that a copy thereof will be furnished to Messrs. McCammon & Hayden as soon after the taking of the testimony as said copy can be made; and that at any time within thirty days after furnishing them with this copy, this witness will, upon their request, be produced for cross-examination by them.)

JOHN HAVENS DAYTON, being duly sworn, deposes and says:

Direct examination by Mr. MICOU.

Question 1. State your full name, age, occupation, and present duties.

A. John Havens Dayton; lieutenant, U. S. Navy; age, 32 years; at present attached to the United States receiving ship "Franklin," Navy-Yard, Norfolk, Virginia.

Question 2. What duty were you on in April, 1898?

A. I was serving on board the "Mangrove" in the Havana blockade.

Question 3. At what time did you go to the "Mangrove?"

A. I was ordered to her in, I think, the first part of 1898; shortly before the beginning of the war.

Question 4. How long did you remain on her?

A. I served on her until the end of the war.

Question 5. Were you on the "Mangrove" the 25th of April, 1898?

A. I was.

Question 6. State what occurred that day in connection with the capture of the "Panama."

A. About 4 o'clock on the afternoon of that day, having taken
287 on board an officer and one enlisted man from the "Indiana," we parted company; the "Indiana" heading to southward, and the "Mangrove" starting across to Key West, about north half west. Possibly about a half an hour from the time we left the "Indiana," or possibly longer, we sighted a steamer on our starboard bow. This steamer appeared to be a merchant vessel; the captain was informed, and he ordered that the "Mangrove" be headed so as to intercept this steamer. We saw that she had colors flying and when we came closer we discovered them to be Spanish colors. When we came within range three shots were fired and the vessel heaved to. The shots fired were 6-pounders. We had only two 6-pounders on board the "Mangrove."

Question 7. What duty were you on during the chase?

A. I was executive officer of the "Mangrove." It was my duty to look out for the battery and seeing the guns served. After the "Panama" had stopped dead in the water we came close to her on her starboard side, our port side towards the "Panama," both heading in the same direction. At a distance of about a ship's length, the dinghy, manned with two men, was lowered, and I was ordered by Captain Everett to take possession of the "Panama" as prize master. He gave orders to send the boat back with the men immediately. On going alongside the "Panama" they lowered the gangway ladder for me, and as I jumped on the lower platform of the gangway ladder I told the boat to return immediately to the "Mangrove." At the upper platform of the gangway I was met by the captain of the "Panama" and the chief engineer, who acted as interpreter. I told the captain that he was a prize, war having been
288 declared between the United States and Spain, and relieved him of command of the ship.

Question 8. How long did you stay on the "Panama?"

A. I was on board the "Panama" from about 6.07 o'clock until between 10.00 and 11.00 o'clock the next day.

Question 9. During the chase, and before you went on board of the "Panama," where were you upon the "Mangrove" in reference to the proximity to Captain Everett?

A. Most of the time I was down by the guns and he was on the hurricane deck. We were about twenty feet apart; the guns were mounted on the main deck forward and he stood up by the wheelhouse on the hurricane deck.

Question 10. Did you have charge of the firing of these guns?

A. I did.

Question 11. Did you hear any conversation between Captain Everett and Chaplain Cassard, or between Captain Everett and Cadet Palmer, about the vessel in sight?

A. I did not.

Question 12. Were you in position to have heard such conversation or not?

A. Probably not.

Question 13. Now, do you remember looking at all, while you were on board the "Mangrove," to see if any other vessels were in sight?

A. Well, not after the chase was well under way. At the beginning of the chase I remember looking at the "Indiana" and saw that she was going the other way, but after that my time was taken up.

Question 14. How long before the capture that you looked and
289 saw the "Indiana" going in the opposite direction?

A. It must have been an hour and a quarter or an hour and a half.

Question 15. Do you know what time it was that you landed on board the "Panama?"

A. I know from the log of the "Mangrove." It was 6.07 in the afternoon.

Question 16. How long was it after you landed on board the "Panama" before the vessel got under way again?

A. Not more than ten minutes. After telling the captain that he was a prize, I went immediately to the bridge and started the engines ahead. Not seeing the "Indiana," I hailed the "Mangrove" and asked what the bearings were, and they replied (I think, Mr. Palmer), "south-southwest." I headed the "Panama" south-southwest, and I saw the smoke of the "Indiana," and soon after I saw her fighting top.

Question 17. Why was it that you asked for these bearings?

A. When I left the "Mangrove," Captain Everett told me that we would both proceed back to the "Indiana," and I inquired what direction in order to know how to head the "Panama."

Question 18. How long was it after that you saw the "Indiana?"

A. I can not tell; the time was very short—five or ten minutes.

Question 19. What did you first see?

A. The fighting top.

Question 20. Where were you at the time you saw the fighting top?

A. On the bridge of the "Panama."

290 Question 21. How far off was the "Indiana" at that time?

A. About eleven and a half miles.

Question 22. On what do you base your information?

A. Thinking of the matter, and knowing about the heighth of the fighting tops of the "Indiana," which are about 60 feet, and the bridge of the "Panama," about 16 feet above the water line, and looking in Table No. 6, Bowditch, which is a table to estimate distances of objects

in the horizon, and the heighth of the object above the horizon in Table No. 6; 60 feet plus 16 feet makes 76 feet, and at a heighth of 75 feet above the horizon an object is visible 11.4 miles.

Question 23. Is that usually the customary way to estimate distances of objects when you have the elevation?

A. Yes.

Question 24. After you went on board of the "Panama," and before the ship got under way, did you have any conversation with Captain Everett?

A. The only conversation was, as I have stated, asking the bearings of the "Indiana."

Question 25. State fully what that conversation was on both sides—what you said and what the captain of the "Mangrove" said.

A. I hailed the "Mangrove" and said: "I can not see the 'Indiana;' how does she bear?" and I was answered, "South-southwest."

Question 26. In your opinion, would it have been possible to have read signals at a distance from which you can only see the fighting tops of the "Indiana" from the bridge of the "Panama?"

291 A. No; you could not read signals at that distance.

Question 27. You stated that when you saw the "Indiana" about one and a quarter hours before the capture she was going in the opposite direction. Do you know the general direction of the flagship from the "Indiana" at the time you parted company with her, about 4 o'clock?

A. I think she was to the south and westward.

Question 28. After you parted company with the "Indiana" and the "Indiana" had started towards the flagship, were the "Mangrove" and "Indiana" moving from each other?

A. Yes. The "Indiana" would probably be moving to the south and westward, and the course to Key West is about north.

Question 29. What experience have you had with signalling?

A. I was signal officer on the "San Francisco" for nearly a year, and most of that time she was with the squadron, and there was a great deal of signalling. Since that time I have put in all my time at sea on training ships, and I have instructed apprentices and landsmen for training in signalling.

Question 30. In your opinion, what is the greatest distance at which day signals can be read under the most favorable circumstances?

A. Between five and six miles.

Question 31. At what distance, in your opinion, can they be read under ordinarily favorable circumstances?

A. I should say between four and five miles—five miles the limit.

Question 32. What do you base these two opinions on?

292 A. When I was on the "Cincinnati" I had the morning watch when we were anchored in upper harbor, Key West. The flagship was lying at the battleship anchorage inside Sand Key Light, about five miles away. A fine, clear morning they made the uniform signals, and the signal quartermaster, with the best glasses on board of the ship, could not make it out, and subsequently, there being so much difficulty in reading the signals, they ordered a ship between the flagship and the upper harbor to repeat the signals, it having been found unsatisfactory signalling at that distance.

Question 33. What were the conditions at the time of this capture for reading signals?

A. Fairly good; probably not as good as at noon or near noon. It was near sunset, and the light possibly not quite as good, but the conditions were fairly good.

Question 34. How large was the Spanish flag on the "Panama?"

A. About 12 feet long, and in very good condition. I noticed this particularly because I wanted to get the flag as a souvenir, and afterwards tried to get it, but failed.

Question 35. What was the condition of this flag as to brightness, cleanliness, etc., as compared to signal flags in the Navy?

A. Signal flags are used in all kinds of weather, and merchant ships do not use their flags except when coming into port or passing vessels or leaving port, and never in bad weather.

Question 36. What are the colors of the Spanish flag?

A. Red, yellow, and red.

293 Question 37. What are the colors in signal flags?

A. Red, yellow, blue, and white.

Question 38. Of these colors, which are the colors most easily distinguished?

A. I should say the red and yellow.

Question 39. What would have been the opportunities for making out the Spanish flag on the "Panama" from the "Indiana," as compared with the opportunities for making out signalling flags from the "Mangrove," at the time the two vessels were there side by side?

A. The Spanish flag could be more readily seen than the signal flags. It was hoisted at mizzan gaff at a height equal to, if not more than, the topmost flag of the "Mangrove." The Spanish being 12 feet and our signal flags about 4 feet, it is all in favor of making out the Spanish flag at a much greater distance than our signals could have been read.

Question 40. Had you had on board the "Mangrove" the other size signal flags, what would have been the opportunity to read the signals made by them in comparison with making out this Spanish flag on that afternoon?

A. The Spanish flag could be made out more easily, because it could be more readily seen than a number of signal flags together. Looking at one flag alone, the sky in the background, you can pick out the colors better than you can from a number of flags, one above the other.

Question 41. How long was it after the "Panama" got underway that this shot was fired from the "Indiana" across her bow?

A. About thirty minutes.

294 Question 42. How far away was the "Panama" at the time the shot was fired?

A. About a mile.

Question 43. What direction was the "Panama" headed at that time?

A. Headed directly towards the "Indiana." The shot fired passed over us; I heard it.

Question 44. Was there any effort at all on the part of the "Panama" to escape from the "Mangrove?"

A. None whatever; in fact they gave me all the assistance possible. The first officer came on the bridge and transmitted my messages to the

wheelman, as he could speak English better than I could Spanish, and all of them aided me as much as possible. They seemed disposed to aid me all they could.

Question 45. Was the flag of the "Panama" flying at the time the "Indiana" fired?

A. I think it was. Yes; shortly after that I had it hauled down. My attention being called to it by the first officer of the "Panama," I had it hauled down on account of the approaching darkness. It is customary to haul down flags for the night at sundown.

Question 46. Did the prizes keep their flags flying?

A. The prizes kept their flags flying until they were adjudicated by the prize court.

Question 47. Did vessels haul down their flags when fired upon and run them up again?

A. I do not think so; I think they remained flying. Some of the prizes may have done so.

Question 48. At the time that the Spanish officer called your
295 attention to the fact that the flag of the "Panama" was still flying, and you ordered it hauled down, was that before, or just at the time, or after the shot from the "Indiana?"

A. I am not sure, but think it was after the shot was fired.

Question 49. How long did the "Panama" and the "Mangrove" stay alongside the "Indiana?"

A. Just long enough to get some men from the "Indiana." The captain of the "Mangrove" asked Captain Taylor for some men, and they were sent over immediately in a cutter, and by that time it was dark, and we used the search light on the gangway of the "Panama" when the men came over the side.

Question 50. Was it before or after this search light was used that the flag was ordered down?

A. Before.

Question 51. When the flagship of a squadron indicates its desire to some vessel of the squadron to learn what a certain vessel approaching is, and that vessel can not make out the signals, but there are other vessels nearer to the vessel whose character is trying to be made out, what is it customary to do?

A. It is customary for the flagship to inquire of the vessel closest to the vessel they wish to discover, and if that vessel is aware of the fact that the flagship cannot make out its colors, it is customary for it to be reported without being ordered.

Question 52. But suppose the vessel that the flagship inquires of can not make out the colors, but there is another vessel between that vessel and the ship the colors of which you are trying to make out, would it be customary to inquire of that vessel?

296 A. It would be customary to inquire of that vessel.

Question 53. Would this take any time or interfere with a chase?

A. Not at all; signals can be made at full speed as well as still in the water.

Question 54. How long does it usually take to make and receive messages by signals?

A. The time varies, according to circumstances and the distance; but in any good signal distance the original signals could be sent and an answer received inside of ten minutes; of course it could be done very much quicker than that, but that is the limit. Telegraph signals would take much longer, but the signals made in the General Code should be made and answered in ten minutes.

Question 55. Have you ever known signals to be made in the Navy by guns?

A. Never.

Question 56. Where are the rules laid down for signalling in the Navy?

A. In the Instructions for Signalling, United States Navy, 1898.

Question 57. What are the circumstances provided there in which sound signals may be used in the daytime?

A. On page 33 of the Instructions for Signalling, United States Navy, 1898, under the head of "Sound Signals," it says, "At night, or in a fog, mist, or falling snow by day or night, sound signals may be made with gun, bell, fog horn, or steam whistle.

Gun: In cases of extreme urgency guns may be fired, using the
297 General Signal Book. The numbers will be made as in the numerals of the Naval Code, one gun being a "1," two guns in rapid succession a "2," and three guns in rapid succession a "3;" the affirmative or "yes," 1212; the negative or "no," 2121; the numeral, 2122; the interrogatory, "1211." That is in the Signal Book in reference to signalling by guns.

Question 58. Was there any fog, mist, or falling snow at the time of this capture?

A. None whatever.

Question 59. Such signals as it is provided in the Signal Book that you can use guns in making, are they made by the sound of the gun, or by seeing the smoke, etc.?

A. By the sound.

Question 60. Did you ever know of signals being made by guns?

A. Never.

Question 61. Would it be possible under any circumstances to make gun signals at a distance where you could not hear distinctly the reports of the gun?

A. No.

Question 62. What would be the difficulty under any circumstances in making gun signals?

A. The difficulty would be various: First, it being a very unusual method and practically never used; the vessel to which the signals were being made would not understand that a signal was intended, and therefore would not be able to get the signal. After the vessel understood that she is being called, it is merely a question of ear, as in other sound signals.

Question 63. How long were you on the "Mangrove?"

A. From about three weeks before the beginning of the war
298 until about a week after the protocol was signed.

Question 64. Was Captain Everett in command all of that time?

A. No; he was condemned by a board of medical survey some time in June and sent home.

Question 65. What do you know about the condition of his eyesight at this time—April 25th, 1898?

A. At that time his eyesight had not been brought to my attention. I had not noticed that his eyesight was defective at that time.

Question 66. Was there any trouble with his eyes before this?

A. No; but subsequently yes. Later on I noticed that his eyesight was not as good as it should be, and he complained about it. I advised him to go to Dr. Weber in Key West and have his eyes examined. Dr. Weber examined his eyes and also his urine, and found that he had diabetes, and called a medical survey on him, and recommended that he be sent to his home.

Question 67. When did you first observe anything wrong with his eyesight?

A. I can not remember; it was on the blockade, however, some time before the time in Key West I mentioned.

Question 68. When you went on board of the "Panama," did you seal up any papers or anything of that sort at all?

A. No; when I went on board of the "Panama," after telling the captain that he was a prize, I went immediately to the bridge, and after the prize crew went aboard, I had the mail taken care of and the hatches locked.

Question 69. How long would you say it took the "Mangrove" and the "Panama" to get under way when they started to move after the capture?

299 A. A very short time; about three or four minutes.

Question 70. What speed were you making when you got under way, approaching the "Indiana?"

A. About eight knots. The "Mangrove" going at full speed and the "Panama" at reduced speed. The "Mangrove's" speed is eight or nine knots, while the "Panama" being faster makes twelve knots usually.

Question 71. Could you see the "Indiana" approaching you as you got nearer to her?

A. Yes.

Question 72. From her appearance at that time, what would you say the speed of the "Indiana" was?

A. Judging from the rapidity in which she approached as we drew together, I should say she was going about ten knots.

Question 73. How many men did you have on board of the "Mangrove" at the time of that capture?

A. About thirty men in the crew.

Question 74. Was there an armament?

A. She carried two 6-pounder guns and one Colt's revolver.

Question 75. What was the size of the "Mangrove?"

A. I do not know the exact tonnage, but I suppose about 800 tons.

Question 76. How large a crew had the "Panama?"

A. About seventy men.

Question 77. Was there an armament on the "Panama?"

A. She had two breech-loading rifles mounted in broadside

300 for firing a projectile weighing about 14 pounds; she had a Maxim gun something like a Gatling gun, mounted on the bridge, and a small yacht gun used for saluting, also sixty or seventy small arms.

Question 78. What was the speed of the "Panama?"

A. About twelve knots.

Question 79. Which, in your opinion, was the superior force?

A. The "Panama." She had the same number of heavy guns, and they were heavier than the "Mangrove's," and in addition to this she had the Maxim gun and small arms, which we had not.

Question 80. At the time of the capture, and at the distance that the "Indiana" was from the "Panama," if the "Indiana" was capable of ten knots, what would have been the opportunities of the "Panama" to have escaped capture?

A. The "Panama" could have easily escaped if it had not been for the "Mangrove." She was a twelve-knot ship, and at that time I think the "Indiana" could not do better than ten, and it was near twilight, and in less than an hour it would have been complete darkness, and in an hour the "Indiana" could not possibly have gained on the "Panama," nor could she have used her guns with any effect, and in the darkness, by masking her lights, it would have been almost impossible to have captured the "Panama."

Question 81. Explain fully why you state the "Indiana" could not have used her guns with any effect?

301 A. At the distance of eleven miles no gun in present use could be used with any effect, and at the distance of six miles the chances are against any shot being placed.

Question 82. Do you know anything of any compass bearings being taken on board of the "Mangrove" during the time Chaplain Cassard was on board of her?

A. Not while I was on board of the "Mangrove."

Question 83. Do you remember whether Yeoman Murray was at one of the guns of the "Mangrove?"

A. I do not; he may have been.

Question 84. What do you remember of Chaplain Cassard and Yeoman Murray being on board of the "Mangrove," as to where they were during this chase?

A. I do not remember. I could not say where they were.

Cross-examination by Mr. King:

Cross-q. 1. How do you know what the speed of the "Panama" was?

A. My knowledge of the speed of the "Panama" is taken from the experience I had taking her to Key West. We had to go at reduced speed on account of the "Mangrove," which convoyed us to Key West, in order that the "Mangrove" could keep up, and also from conversation with the chief engineer of that vessel, who remained in charge.

Cross-q. 2. Then you do not know by any actual trial that she could have made twelve knots?

A. Only as stated above—the experience I had in taking her to Key West.

Cross-q. 3. Did you ever make any examination of the guns of the "Panama?"

A. I looked at them casually.

302 Cross-q. 4. Were they loaded?

A. I think not.

Cross-q. 5. Do you know whether they had the breechblocks on?

A. I do not know. I was told that the breechblocks were not on.

Cross-q. 6. Do you know where they were?

A. Some one told me they were stowed below.

Cross-q. 7. Were the guns covered?

A. They had on gun covers

Cross-q. 8. You had no knowledge, then, that the guns of the "Panama" were fit for use at the time of the capture?

A. No; I have no direct knowledge that they were fit for use.

Cross-q. 9. Do you know where the ammunition was for the guns?

A. I suppose it was stowed below; though I heard afterwards that the ammunition for the Maxim gun was kept on the bridge; I did know this from personal knowledge.

Cross-q. 10. You said, I believe, that you looked around the horizon in getting on the "Panama" and did not see the "Indiana?"

A. I did.

Cross-q. 11. What was the first you saw of the "Indiana" after getting on the "Panama?"

A. I first saw the smoke and soon after I saw her fighting tops.

Cross-q. 12. How long was this after you had gone on board of the "Panama?"

A. Five or ten minutes.

303 Cross-q. 13. How long after that before you saw the body of the vessel?

A. I am not sure.

Cross-q. 14. Tell me what you saw when you first saw the smoke?

A. Just the appearance of smoke in the horizon, as is seen when any steamer approaches.

Cross-q. 15. You made no special effort while on the "Mangrove" to see whether any steamer was in sight, did you?

A. I did not.

Cross-q. 16. When you looked around the horizon, and failed to see the "Indiana," did you use glasses, or just the naked eye?

A. I do not remember.

Cross-q. 17. When you saw the smoke did you use glasses?

A. I do not remember; possibly I did, as it is a very natural thing to do.

Cross-q. 18. You say you saw the "Indiana" at the beginning of the chase; did you look for her again after that?

Cross-q. 19. No; that was the last time.

Cross-q. 20. When you got on board of the "Panama" did you make any report to the commander of any conditions you found there?

A. None whatever.

Cross-q. 21. Was it not rather unusual not to communicate with him in some way?

A. Well, not in view of the fact that this was the enemy's ship. In case it was a neutral ship it would be necessary to overhaul all papers to determine whether eligible for capture; but the mere fact of this being the enemy's ship made it a prize.

Cross-q. 22. Have you any remembrance of using the mega-
304 phone from the bridge of the "Panama?"

A. I do not remember.

Cross-Q. 23. Did not Captain Everett call to you after you were on the "Panama?"

A. I do not remember.

Cross-Q. 24. At what distance would it be possible for a man on the "Panama" or "Mangrove" to be recognized personally from the "Indiana?"

A. I should say about 300 or 400 yards would be the extreme limit.

Cross-Q. 25. Did you see any prize captured during the Spanish war, except the "Panama?"

A. I saw one small prize captured by the "Mangrove." She was a sloop and very small. And, in the distance, I saw a sailing vessel.

Cross-Q. 26. Your experience is limited to this vessel?

A. Yes.

Cross-Q. 27. In giving your deposition on the 31st of May, page 24 of the record, one of the questions put to you as follows: "Please state any other facts in your knowledge which you have not yet stated tending to show what vessels of the Navy were in signal distance of the vessel or vessels taking the prize." Your answer to this question was: "I have no more facts to state." Why did you not state, in answer to that question, that you saw the smoke of the "Indiana?"

A. When I made that deposition it was clear to my mind that
305 the "Indiana" was not in signalling distance, and therefore I made no mention of the fact.

Cross-Q. 28. What direction was the "Indiana" from the "Panama" at the time you saw the smoke?

A. About south-southwest. The sun was shining down from the direction of the "Indiana" towards the "Mangrove" and the "Panama," so that I could not see distinctly.

Cross-Q. 29. So that the reflection would be from the "Mangrove" and "Panama" towards the "Indiana?"

A. Yes.

Redirect examination by Mr. MICOU:

Re D. Q. 1. If these breech plugs were on board the ship, would that have affected the efficiency of the guns?

A. It would not have impaired the efficiency, as they could have been put in in a very few moments, and the guns ready for action in a very short time. The breech plugs could have been brought up as quickly as the ammunition, and in a few moments these guns would practically be in condition to be of use.

Re D. Q. 2. Were these guns mounted?

A. They were mounted one on each side of the main deck.

Re D. Q. 3. What else, if any, was there to indicate that this was a fighting ship besides these guns?

A. There was a charter from the Spanish Government conveying on her the power of an auxiliary cruiser in time of war. She was flying a man-of-war flag, and a man-of-war flag differs from a merchant flag in Spain. A man-of-war flag has but three stripes, while the merchant flag has four.

306 Recross-examination by Mr. KING:

Re D. Q. 4. When you say that the breech plugs can be easily put in, you mean by experienced men in the naval service?

A. I mean any one who knows the gun. I do not suppose a practically green man could do it.

Re D. Q. 5. You do not know whether the breech plugs were stowed where they could be easily gotten at?

A. I do not.

JOHN H. DAYTON, *Lieut., U. S. N.*

Sworn to and subscribed to before me this 5th day of Nov., 1901.

[SEAL.] JNO. W. SULLIVAN,
Notary Public.

307 Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
vs.
THE OFFICERS AND CREW OF THE U.S.S. "MANGROVE." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," "Indiana," and "Wilmington," appellants,
vs.
THE OFFICERS AND CREW OF THE U.S.S. "MANGROVE." } No. 17930.

STATE OF FLORIDA, *County of Monroe.*

On this 14th day of November, A. D. 1901, personally appeared before me, J. M. Phipps, a notary public in and for the county and State aforesaid, and acting as such in said county and State, and by consent of the parties acting as Commissioner in the aforementioned cases, Albert Chip Chase, Thorveld Overn, Charles Peterson, John Hansen, Charles S. Ellmore, Philip Louis Cosgrove, jr., and James Jones, upon the call of the officers and crew of the U. S. S. "Mangrove," who first by me being duly sworn to speak the truth, the whole truth, and nothing but the truth, were thereupon examined by Jefferson B. Browne, esq., for the officers and crew of the U. S. S. "Mangrove," and by William B. King, esq., for the officers and crew of the U. S. S. "Indiana,"

308 and who also appeared for the United States. The questions and answers hereinafter appearing were duly taken down in shorthand by a disinterested amanuensis, Geo. A. Flanagan, agreed upon by the counsel for the parties aforesaid, and by him reduced to writing, and after being so reduced, the same was read over by the said Albert Chip Chase, Thorveld Overn, Charles Peterson, John Hansen, Charles S. Ellmore, Philip Louis Cosgrove, jr., and James Jones, and subscribed to by them in my presence.

Witness my hand and seal of office this 18th day of November, A. D. 1901.

[SEAL.] J. M. PHIPPS,
Notary Public, Monroe County, Florida.

309 ALBERT CHIP CHASE, a witness called on behalf of the officers and crew of the U. S. S. "Mangrove," having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. JEFFERSON B. BROWNE:

1. Q. What is your name, residence, and occupation?

A. Albert Chip Chase; seaman; residence, Key West, at present.

2. Q. Where are you employed now?

A. On the U. S. L. H. S. "Laurel."

3. Q. How long have you been in the Light-House Service on board of light-house vessels?

A. Including the war and all, six year and some months.

4. Q. What steamer were you on during the month of April, 1898?

A. On the "Mangrove," sir.

5. Q. In what capacity were you employed?

A. I first shipped as seaman, and after being aboard two or three days they rated me as boatswain's mate, first class, although I was aboard of her long before that. I was in her before she came out from New York.

6. Q. Were you on the "Mangrove" on the 25th of April, 1898?

A. Yes, sir.

7. Q. Now state what occurred on the afternoon of the 25th of April, beginning from the time you left the "Indiana" till you returned to the "Indiana" that night.

A. We were on our way to Key West, sir, when we left the "Indiana." The "Indiana" steered to the southward and westward and we steered for Key West; that is, I think it was the southward and
310 westward. I am not certain of the direct course, but we were going different from each other. I would not say positively about the course.

8. Q. Were you going directly away from each other?

A. Going directly away from each other, sir.

9. Q. How long after leaving the "Indiana" before you sighted any steamer?

A. Well, it was about half an hour, I calculate, sir. It might have been three-quarters of an hour; I am not certain how long after they left each other. And we altered our course and made for her. We found she was a Spanish vessel; fired three guns, and she hove to. We lowered the boat and Mr. Dayton went aboard of her. As soon as he boarded the boat returned right away. We took the boat up. As soon as she was hooked on we made way on the "Mangrove," so that she steered to the southern westward. Gave orders to Mr. Dayton to do the same. About 7 o'clock the "Indiana" came up to us and hailed us. The crew all gave three cheers.

10. Q. Did the "Indiana" do anything when you first came up to her?

A. She fired a gun before she came up in hailing distance from us. I didn't know where the gun came from, but they said she fired it.

11. Q. What was the condition as to light when you came up with the "Indiana?"

A. It was dark, sir.

12. Q. Were searchlights being used on either "Mangrove" or "Indiana?"

A. I saw a searchlight used on the "Indiana."

13. Q. How near was the "Mangrove" to the "Panama" when the boat was sent aboard the "Panama?"

A. About 200 yards, I guess.

14. Q. Did you see the lowering of the dinghy?

A. Yes, sir.

311 15. Q. Was anybody in the dinghy when it was lowered?

A. Yes, sir; both men was in the dinghy that was to go.

16. Q. Where was Mr. Dayton while the dinghy was being lowered?

A. Mr. Dayton stood on the guard outside the ship, ready to jump in the dinghy as soon as she touched the water.

17. Q. How long were they pulling across to the "Panama" from the "Mangrove?"

A. I don't think it was over two or three minutes. It would not take longer than that.

18. Q. Then what happened?

A. As soon as Mr. Dayton stepped on the gangway, the dinghy shoved off?

19. Q. Had Mr. Dayton gotten on deck of the "Panama" before the dinghy shoved off?

A. No, sir; he had not arrived to the deck yet, before the dinghy shoved off.

20. Q. How long was the dinghy in returning to the "Mangrove?"

A. About the same time that she took to get there—between two and three minutes.

21. Q. How long after the dinghy returned to the "Mangrove" before the "Mangrove" got under way?

A. It had not been alongside not two minutes, but just as soon as the dinghy was hooked on, orders were to go ahead. The dinghy had not arrived up to the davits when the "Mangrove" started.

22. Q. What vessels, if any, were in sight of the "Mangrove"—what vessels besides the "Panama"—at the time the shots were fired across the bow of the "Panama" by the "Mangrove?"

A. I could not see any vessels at all, sir, no more than a smoke 'way down to the southern westward of us.

23. Q. Where were you?

A. I was standing on the lower deck.

312 24. Q. What, if anything, drew your attention to the fact that there were no vessels in sight?

A. I kept looking around, sir, and I could see no vessels, except that smoke, which was to the westward.

25. Q. Could you see any part of the hull or the fighting tops or masts or smokestacks of any vessels?

A. No, sir; I could not.

26. Q. How did the smoke appear when you first observed it at the time of the capture of the "Panama?"

A. I could not say how it appeared, only I could see nothing but a ball of smoke up in the air, like. What way it was blowing, I could not make out.

27. Q. Were there any vessels in signal distance of the "Mangrove" at the time of the capture, other than the "Panama?"

A. No, sir.

28. Q. What do you understand by signal distance?

A. Well, sir, what I means to say, I know I was not near enough to see any flags, not even to see them blow, much less to see signals.

29. Q. In what direction was the wind blowing, as relates to the position of the "Mangrove" and the smoke which you saw in the distance?

A. The wind was about north-northwest; that is what I think it was.

30. Q. And in what direction was this smoke?

A. This smoke was about south-southwest from us.

31. Q. Who fired the three shots from the "Mangrove" that were fired across the bow of the "Panama?"

A. Mr. Dayton fired two of them, to my knowledge.

32. Q. Who fired the other?

A. I fired the other one.

33. Q. Which one did you fire?

A. I fired the last shot—the starboard gun.

313 34. Q. How long was it from the time you got under way, in company with the "Panama," proceeding in the direction of this smoke, before the shot was fired from the "Indiana" across the "Panama?"

A. We must have been under way about three-quarters of an hour before she fired that shot.

35. Q. How long have you served on the "Mangrove?"

A. I joined the "Mangrove" in November, 1897, and remained aboard of her until the close of the Spanish war.

36. Q. What speed is the "Mangrove" capable of making?

A. She is capable of making, and always has been, from 8 to 9 knots.

37. Q. What speed was she making from the time you sighted the "Panama" and headed for her until you fell in with the "Panama?"

A. She must have been making 9, sir, for we were doing the best with her.

38. Q. What was she using besides her steam power?

A. Sails. All the sails we had were set.

39. Q. Was the wind in such a direction that the sails would draw effectively?

A. Yes, sir.

40. Q. Did you have sails set before you sighted the "Panama?"

A. No, sir; we could not set them, because the wind was right direct ahead. After changing the course to chase the "Panama," then the sails were set and would draw just as we wanted them.

41. Q. After getting under way in convoy with the "Panama" and proceeding in the direction of the smoke, were the sails still set?

A. Still set, sir.

42. Q. And did they draw?

A. They drawed, sir.

314 43. Q. What time were you making, when you left with the "Panama," till the "Indiana" fired the shot across the "Panama?"

A. She was making about 8 knots. We took the sails in after we got charge of the "Panama."

44. Q. Did you set them again after leaving with the "Panama?"
A. No, sir; I don't believe we did.
45. Q. Did you see Captain Everett during the time of the chase?
A. Yes, sir; I saw him once or twice.
46. Q. Where was he?
A. He was standing between the house and the foremast, down on the pilot-house deck.
47. Q. Did you see him on the bridge at all?
A. No, sir. If he had been on the bridge I would not have been able to see him—not from where I was standing.
48. Q. If the sails are set on the "Mangrove," could a person on the bridge have an unobstructed view?
A. They could not have as good a view as they could down on the hurricane deck, because the sails would naturally hide the view.
49. Q. How much above the hurricane deck is the bridge?
A. Oh, the bridge is a pretty good height above the hurricane deck; I would not say exactly how many feet; I suppose between 8 and 9 feet it should be.
50. Q. Did you hear any conversation by Chaplain Cassard or Yeoman Murray, while they were on the "Mangrove," in relation to the capture of the "Panama" or of the presence of the "Indiana?"
A. No, sir; I did not. I was not in position to hear anything. I was busy about the deck.

Direct examination closed.

315 Cross-examination, by Mr. WILLIAM B. KING:

1. Q. About how long was it from the time that Mr. Dayton went on board the "Panama" until the "Indiana" came up?
A. About an hour, sir. That is about as close as I can come to it. I ain't certain of it, but it appeared to be that long to me.
2. Q. How dark was it when Mr. Dayton went aboard the "Panama?"
A. It was broad daylight, sir. The sun had not set.
3. Q. Did you hear any talk between Mr. Dayton and Captain Everett after Mr. Dayton went on board the "Panama?"
A. No, sir; I did not hear anything. I was busy about the deck.
4. Q. You knew there was some talk going on between them?
A. Yes, sir; there was talk going on between them from one ship to the other.
5. Q. When the "Indiana" fired off the gun, how far was she then from the "Mangrove?"
A. I could not say exactly how far she was off.
6. Q. How big a boat was it that Mr. Dayton took to go aboard the "Panama" in?
A. The boat was the smallest boat there was aboard the ship—"Dinghy," she was called.
7. Q. How long?
A. Between 15 and 16 feet, according to my judgment.
8. Q. How many men were in it?
A. There was two men besides Mr. Dayton, who made the third.
9. Q. And do you think that two men could have pulled that boat from the "Mangrove" to the "Panama" in that time?

A. Yes, sir; I do. We were laying pretty close to each other. You could speak from one ship to the other.

316 10. Q. Wouldn't you think that it would take nearer five?

A. No, sir; my idea is that they could do it in three minutes, at the outside.

11. Q. Now, how do you make your estimate of the speed of the "Mangrove?"

A. Generally make the estimate with the log. When we was going anywheres we always carried the log astern. We were never without it before this chase, without we were laying to a blockade.

12. Q. After the chase was over and you caught the "Panama" you were not in quite as big a hurry as you were before you caught the "Panama," were you?

A. Just as big as ever, because we wanted to get to Key West as quick as possible, because we were short of coal. We had orders for Key West.

13. Q. Then you did not go any faster when you were trying to catch the "Panama" than you did after you caught her?

A. I gave her a knot more with the sails set. The sails were set during the chase.

14. Q. When you had the sails set they were pushing the engines as hard as possible?

A. As hard as possible. The men that were just off of watch went down again to assist the men that were on watch.

15. Q. But they did not push the engines any more rapidly then than they did after they caught the "Panama" and were going toward the "Indiana?"

A. They pushed them all that they could. All they had to do was to keep steam up on them.

16. Q. Before you stopped the "Panama," did you look around for the "Indiana" or other vessels?

A. I looked around, because I made the remark that I did not feel safe in taking it. I spoke that to someone else. I felt like we were making a big risk to tackle that vessel with no other vessel in sight.

317 17. Q. Now, how long was that before you and the "Panama" stopped? How long was it after you made that remark that you and the "Panama" stopped?

A. Oh, it was about ten or fifteen minutes before we stopped her. I just merely spoke it to one of the men that was standing by me.

18. Q. Did you look around at the time that Mr. Dayton was going over to the "Panama" to see if there were any other vessels in sight?

A. Yes, sir; I did.

19. Q. What did you see then?

A. I saw this smoke.

20. Q. Didn't you see any of the upper work of the "Indiana?"

A. None whatever, sir.

21. Q. Did you see the smoke of any other vessel besides the "Indiana?"

A. I saw the smoke at the time, but I didn't know what it was, but it turned out to be the "Indiana."

22. Q. Did you see any other smoke?

A. No other smoke at all, only the smoke of the "Panama."

23. Q. After taking the "Panama," why didn't you keep the sails set?

A. Well, I don't know; it was getting dark, and they never hardly ever bothers with sails after dark in a case like that, without you are in a regular chase for something.

24. Q. What direction from you was this smoke that turned out to be the "Indiana," at the time Mr. Dayton went aboard the "Panama?"

A. In my judgment, it was south-southwest. It may not have been direct that, but that is what I thought it was. I was not near a compass at the time.

25. Q. What kind of evening was it?

A. It was a pretty clear evening, sir.

318 26. Q. When were the sails all down from the "Mangrove?"

A. Just as she was passing our bows. We took the sails in as soon as we got up in gunshot of her.

(Witness corrects his answer to questions 41 and 42, so as to say that sails were not set at that time.)

Cross-examination closed. Witness dismissed.

his
ALBERT x CHIPCHASE.
mark.

[SEAL.] J. M. PHIPPS,
Notary Public.

THORVELD OVERN, a witness called on behalf of the officers and crew of the U. S. S. "Mangrove," having first been duly sworn to tell the whole truth and nothing but the truth, testified as follows:

Direct examination by Mr. BROWN:

1. Q. State your name, age, and employment.

A. My name is Thorveld Overn; 29 years of age; present employment, seaman aboard the light-house steamer "Laurel."

2. Q. Have you ever had any service on naval vessels?

A. Yes, sir.

3. Q. Where?

A. I have been in the Norwegian navy for nine months, and this Navy during the Spanish war.

4. Q. Where were you on the 25th of April, 1898?

A. On the U. S. S. "Mangrove."

5. Q. State what occurred on the afternoon of that day, from the time you left the "Indiana" until you fell in with the "Indiana" again at night?

A. Well, we got orders to go to Key West, and on the way to Key West we sighted a steamer on the starboard bow, and we changed our course and steamed for her to cut her off. We got within firing distance and fired three shots, and she hove to. We lowered a boat, and Ensign Dayton went aboard and took possession of her. We got under way as soon as Mr. Dayton boarded the "Panama," and steered toward the "Indiana."

319 6. Q. How did you know where the "Indiana" was?

A. Well, we could not exactly tell whether it was the "Indiana" or not, but we saw a big smoke to the stern of us.

7. Q. Did you steer towards that smoke with the "Panama" in charge?

A. Yes, sir.
8. Q. What did it turn out to be?
A. To be the "Indiana."
9. Q. When did you fall in with the "Indiana?"
A. About 7 o'clock.
10. Q. What was the condition as to light?
A. It was getting dark.
11. Q. Did you see searchlights used on either vessel?
A. Yes; the "Indiana" used a searchlight.
12. Q. What position did you hold on board the "Mangrove?"
A. Seaman.
13. Q. How long a time was it from the time you left the "Indiana" until you sighted the "Panama?"
A. I judge about three-quarters of an hour.
14. Q. After sighting the "Panama" did you continue on the same course which you were steering?
A. No, sir; we kept about theee points to the eastwards from our original course.
15. Q. After you headed for the "Panama" how was she heading?
A. She was steering for the southern-westward—between southwest and west-southwest.
16. Q. And how was the "Mangrove" heading?
A. The "Mangrove" was heading to northeast.
17. Q. Were you approaching each other then?
A. Yes.
18. Q. Did you have your sails set after you left the "Indiana" before you sighted the "Panama?"
A. No.
320 19. Q. Did you set your sails when you headed for the "Panama?"
A. Yes, sir; as soon as we changed the course we set the sails.
20. Q. Did the sails draw?
A. Yes, sir.
21. Q. What speed was the "Mangrove" making after you started towards the "Panama?"
A. Between 8 and 9 knots.
22. Q. After you came up to the "Panama" what was done then, after firing the three shots?
A. She hove to and we sent a boat aboard of her.
23. Q. What boat was that?
A. The dinghy on the port side.
24. Q. Where was the dinghy before you sent it aboard the ——?
A. Hanging in the davits on the port side.
25. Q. Could a person on the starboard side of the "Mangrove" see the dinghy where it was hoisted to the davits?
A. No, sir; you could not see it on account of the pilot house.
26. Q. Could they see it while it was being lowered from the davits?
A. No, sir.
27. Q. When did you commence to lower the dinghy from the davits?
A. As soon as the "Mangrove" stopped her headway.
28. Q. How long did it take to pull over from the "Mangrove" to the "Panama?"

A. Between two and three minutes.

29. Q. Did you see the dinghy when she left the "Panama?"

A. Yes, sir.

30. Q. Where was Mr. Dayton when she left the "Panama?"

A. He was standing on the gangway ladder.

321 31. Q. He hadn't gotten to the deck of the "Panama" when the dinghy shoved off?

A. No, sir.

32. Q. How long was the dinghy in returning to the "Mangrove?"

A. Between two and three minutes, the same as it took to go.

33. Q. After the dinghy came alongside the "Mangrove," when did the "Mangrove" get under way?

A. She got under way as soon as the dinghy was hooked and clear of the water.

34. Q. Had the dinghy gotten up to the davits before the "Mangrove" got under way?

A. No, sir; she was under full headway when the dinghy got up to the davits.

35. Q. What speed did the "Mangrove" make in proceeding in the direction of the smoke which you say you had seen, and which proved to be the "Indiana?"

A. She made about 8 knots, I guess. She made as much as she could without the sails on.

36. Q. How long were you steaming from the time you got under way with the "Panama" until the "Indiana" fired the shot?

A. About three-quarters of an hour.

37. Q. Did you hear any conversation by Chaplain Cassard and Yeoman Murray while they were aboard the "Mangrove?"

A. No, sir.

38. Q. Did you see Captain Everett during the time you were heading for the "Panama?"

A. Yes, sir.

39. Q. Where was he?

A. He was down on the hurricane deck, in front of the pilot house, all the tine.

40. Q. Was he on the bridge at all?

A. No, sir; I didn't see him on the bridge.

322 41. Q. What vessels could be seen from the "Mangrove" at the time of the capture of the "Panama," other than the "Panama" herself?

A. Could not see none at all. I didn't see none, and I looked all around.

42. Q. What could you see that would indicate that there were any vessels anywhere near you?

A. I could see a cloud of smoke.

43. Q. Smoke from how many?

A. Only one.

Direct examination closed.

Cross-examination by Mr. KING:

1. Q. How light was it when Mr. Dayton went aboard the "Panama?"

A. The sun was just setting.

2. Q. Was the evening clear?
A. Yes, sir; it was clear.
3. Q. How light was it when the "Indiana" came up?
A. It was dark.
4. Q. When did you first see the "Indiana" itself?
A. I saw the "Indiana," I think, about half an hour after we captured the "Panama."
5. Q. What did you see of her?
A. I seen her fighting tops.
6. Q. How dark was it when the "Indiana" came up?
A. It was dark then.
7. Q. How dark was it when you saw her fighting tops?
A. It was just getting dusk.
8. Q. How low down was this smoke that you saw?
A. It was right down on the horizon.
323 9. Q. Did you see any other smoke besides the smoke that was the "Indiana?"
A. No, sir.
10. Q. Did the "Mangrove" go any faster when she was chasing the "Panama" than she did after she took the "Panama?"
A. Yes, sir; I guess she did; went about a half a knot or more faster, I suppose.
11. Q. Then you were not in such a hurry after you made the capture as you were before?
A. Yes; we were still going full headway.
12. Q. Do you know what the condition of the bottom of the "Mangrove" was at this time?
A. It was nearly clean, because she had only been in the water three months.
13. Q. How do you estimate the number of knots she was making?
A. By reading the log. I have been reading the log quite a number of times, and she made an average of 8 knots, and if you drive her she makes a little more.
14. Q. How large a boat was this that went over from the "Mangrove" to the "Panama?"
A. She was 16 feet long.
15. Q. How many men did you carry?
A. Two men and Mr. Dayton.
16. Q. How far was the "Mangrove" from the "Panama" at that time?
A. I judge about 200 yards. You could see everything plain on the decks.
17. Q. How far was the "Indiana" from the "Mangrove" when the gun was fired from the "Indiana?"
A. Well, I can't exactly tell. Inside of a quarter of a mile, I guess.
18. Q. How long a time do you estimate it was from the time Lieutenant Dayton went aboard the "Panama" until the "Indiana"
324 fired her gun?
A. About three-quarters of an hour.
Cross-examination closed.

THORVALD OVERS

CHARLES PETERSON, a witness called on behalf of the officers and crew of the U. S. S. "Mangrove," having first been duly sworn to tell the whole truth and nothing but the truth, testified as follows:

Direct examination by Mr. BROWN:

1. Q. State your name, age, and present employment.

A. My name is Charles Peterson; 27 years of age; present employment, assistant engineer of the Light-House Service.

2. Q. Were you on the "Mangrove" on the 25th of April, 1898?

A. I was.

3. Q. What position did you hold on her at that time?

A. Oiler.

4. Q. On what part of the "Mangrove" did your duties as oiler require you to be?

A. I was standing five feet abaft the port gun.

5. Q. You were not on duty?

A. I was off duty; came off duty at 12 noon.

6. Q. You say you are an assistant engineer in the Light-House Service?

A. Yes, sir.

7. Q. Are you familiar with the machinery of the "Mangrove's" engines?

A. I am, sir. I have been chief engineer of the "Mangrove" since the war.

8. Q. You have been chief engineer on the "Mangrove?"

325 A. I have been chief six months, temporarily.

9. Q. You know, then, what she is capable of doing?

A. Yes, sir.

10. Q. What is the usual speed of the "Mangrove?"

A. Eight knots.

11. Q. Can you get any more than that out of her?

A. Well, yes, you can by pushing her a little.

12. Q. How much more can you get?

A. Well, I have seen the time she has made 9½. On her official trial trip—she was built for a 12-knot boat—but all they ever got out of her on her trial trip was 10 knots.

13. Q. Then under ordinary circumstances, when she had been in the water not over three months, what can you get out of her by driving her?"

A. Well, 9 knots on the average, and favorable conditions and a good draft.

14. Q. Now, will you state everything that occurred from the time you left the "Indiana" on the afternoon of the 25th of April, 1898, until the capture of the "Panama?"

A. We left the "Indiana," as far as I remember, about 20 minutes to 4, and we started for Key West—the course I could not tell. I don't know the course. And about 5 o'clock or a little afterward, we sighted a smoke in our direction, or on the starboard bow. I was then standing out on the forward deck, and Peterson, the mate, he took his spyglass and he spied in the direction of the smoke. Captain Everett was down below in the cabin at the time. At 6 o'clock we fired a port gun—fired two shots out of port gun—and about 6.5 or 6.4 we fired a starboard gun. Captain Everett was then standing on the starboard side of the

hurricane deck, alongside the pilot house. After the starboard gun was fired the "Panama" stopped and Captain Everett spoke to the captain
of the "Panama." He says, "Captain, if you don't stop, I will
326 fire into you." When the starboard gun was fired, I noticed very particular a lady who was aft on the hurricane deck or on the quarter deck of the "Panama," and when the shot was fired the shell went over close across her bow, and this lady appeared to be very excited and scared, and she went up to the bridge and made some sign to some officer up there, I could not tell whether it was captain or mate. I also saw a sailor or a man of the "Panama," who was taking the tarpaulin off her port gun—one of her guns, anyway—but he was stopped by an officer that had uniform on. And the dinghy was then lowered, and Ensign Dayton was sent aboard as prize master, and the dinghy was returned immediately and hoisted up at 6.07, and we got under way at full speed. We had a good pressure of steam up, and she was doing her best. We were then steaming in the direction of the smoke, and about 7 o'clock a shell was fired across the "Panama's" bow. Then it was dark. We could then see the flash, but we could not see the ship. We did not know where the shell come from.

15. Q. How long was it after you had got under way with the "Panama" before this shot was fired from the "Indiana"—about how long?

A. About 53 minutes.

16. Q. How do you fix the time?

A. Well, I happened to be out on deck and I heard the bell strike 6 bells when the "Panama" come up.

17. Q. When she came up to the "Indiana?"

A. Yes, sir.

18. Q. Six bells is what time?

A. 7 o'clock.

19. Q. What was the condition of the atmosphere as to light when you fell in with the "Indiana?"

A. It was dark.

20. Q. Did you see searchlights used?

327 A. I think I did; yes, sir. The searchlight of the "Indiana" was throwed on the "Panama's" gangway to let the prize crew get aboard.

21. Q. How long was this dinghy boat going from the "Mangrove" to the "Panama?"

A. About 5 minutes.

22. Q. How long after the dinghy returned before the "Mangrove" got under way?

A. She got under full speed right away, sir. As soon as the dinghy was hoisted out of the water she was signaled full speed down in the engine room.

23. Q. From your knowledge of the engines of the "Mangrove," how long does it take her to get under full headway if she has got a full head of steam?

A. Well, it will take from 2 to 3 minutes to get her speed.

24. Q. What speed was she making from the time she squared away from the "Panama" until she fired the shots across her?

A. Well, she was then making about 9 knots. Of course, she had her sails set, and that helped her considerable.

25. Q. What speed was she making after the sails were taken in and she steered with the "Panama" toward the smoke of the Indiana?

A. She was doing her best.

26. Q. Did any of the fire-room force that were off duty go on duty during this chase and while they were proceeding to the Indiana?

A. Yes, sir; some of them went down to the fire room and gave a hand—some of the firemen.

27. Q. At the time of the capture of the "Panama," what vessels were in sight from the "Mangrove" besides the "Panama?"

A. None.

328 28. Q. What could you see of any vessels at all?

A. Smoke.

29. Q. The smoke of how many vessels?

A. One smoke; that is all we could see.

30. Q. In what direction was this smoke?

A. In southward and westward.

31. Q. Was it in the direction from which you had come?

A. Yes, sir.

32. Q. Could you see any part of any vessel at all from the "Mangrove" besides the "Panama?"

A. No, sir.

33. Q. How long after you had gotten under way with the "Panama" before you made out any fighting tops of any vessels or any part of a vessel?

A. I could not make any out all, because it was dark when she fired her shot. We could not see anything. It was on the surprise to everybody. We didn't know where the shell was coming from.

34. Q. Did you see Captain Everett while you were going towards the "Panama," before the capture?

A. I did, sir.

35. Q. Where was he?

A. On the hurricane deck?

36. Q. Was he on the bridge at all?

A. No, sir.

37. Q. Did you hear any conversation between Chaplain Cassard and Yeoman Murray, who were on the "Mangrove?"

A. I did not. Oh, I saw Chaplain Cassard and Captain Everett shook hands, but I didn't hear any conversation. That occurred on the port side of the hurricane deck, when the dinghy was loading to go towards the "Panama" that happened.

38. Q. What, if any, vessels were in sight from the "Mangrove" at the time of the capture of the "Panama?"

329 A. None.

Direct examination closed.

Cross-examination by Mr. KING:

1. Q. Did you see the "Panama's" guns?

A. No, sir; I could not see them, they were covered up.

2. Q. What were they covered with?

A. With the tarpaulin, of course. We could see the breech of the gun after the tarpaulin was taken off.

3. Q. When did you first see the "Indiana"?

A. We didn't see the "Indiana" at all—I didn't.

4. Q. Didn't you see the "Indiana" at all from the time the "Panama" was captured?

A. We saw the "Indiana" after she came up alongside the "Mangrove."

5. Q. Didn't you see the "Indiana" at all between the time when Mr. Dayton went aboard the "Panama" until the "Indiana" fired her gun?

A. No, sir.

6. Q. Were you looking?

A. I was looking, sir.

7. Q. How much smoke was this that you saw about the time Mr. Dayton went aboard?

A. Well, it looked like smoke coming out of one smokestack.

8. Q. Couldn't you see the smokestack?

A. No, sir.

9. Q. Were the engines of the "Mangrove" driving as hard after she took the "Panama" as when she was chasing her?

A. After we captured the "Panama," I guess she was going a little more. Of course, when she stopped we steamed her up, and we had a good head of steam. Probably she was making a little over 9 knots.

330 10. Q. You say it was 6 bells, or 7 o'clock, when the gun was fired from the "Indiana?"

A. Yes, sir.

11. Q. Did you hear any talk between Mr. Dayton and Captain Everett?

A. Mr. Dayton asked what direction he should steer, or something to that effect, and I think that Captain Everett said south-southwest, or something like that.

12. Q. How did they communicate with each other?

A. They hailed to one another with a megaphone.

13. Q. How do you remember these exact hours that you give?

A. I happened to be on deck.

14. Q. How can you remember so definite after years?

A. All this has been impressed on my mind.

15. Q. When did the extra firemen who were off duty help in the engine room?

A. When we were going toward the "Panama."

16. Q. Why didn't the "Mangrove" use her sails after she started toward the "Indiana"?

A. I do not know why she didn't use her sails.

17. Q. How often have you talked over this matter with your comrades?

A. Well, off and on the last three years, we have spoken about the "Panama."

18. Q. When was the last time you talked it over?

A. Well, the last time we spoke of it was when we got news we were going down to make statements.

19. Q. What did you do then?

A. We just talked the matter over.

20. Q. All discussed it with the others?

A. Yes.

21. Q. How did you find that the recollections agreed?

A. We found that they agreed perfectly between the men that was there.

331 22. Q. When did you last have your talk with any men about this?

A. Two or three days ago—three days ago, I think.

23. Q. What men did you talk with?

A. I spoke to Mr. Cosgrove, the mate of the Laurel, and the second mate of the Laurel.

24. Q. Who was he?

A. Mr. Hanson, and two of the sailors.

25. Q. Who were they?

A. Overn and Chip Chase.

Cross-examination closed. Witness dismissed.

CHARLES PETERSON.

JOHN HANSEN, a witness called on behalf of the officers and crew of the U. S. S. "Mangrove," having first been duly sworn to tell the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. BROWN:

1. Q. What is your name, age, and present employment?

A. John Hansen; age, 31; present employment, second mate of the Laurel.

2. Q. How long have you been in the light-house service?

A. Going on 5 years now, sir.

3. Q. How long have you ever served on board the "Mangrove?"

A. Aboard the "Mangrove" from the time we brought her from New York in 1898, before the war started. I think it was about in January, the time we came down here in 1898.

4. Q. Was it before or after Christmas?

A. It was after Christmas.

5. Q. Did you serve on her from then until after the Spanish war?

A. Yes, sir.

332 6. Q. What position did you hold on her during the Spanish war?

A. Coxswain, doing quartermaster's duty on the bridge.

7. Q. Now state what occurred on the afternoon of April 25th, 1898, from the time you left the "Indiana" until you fell in with the "Panama."

A. Well, from the time we left the "Indiana" we got our orders, I think it was somewheres close to 4 o'clock, I went on watch at 4 o'clock, and she was on the way down. To my knowledge it was about 45 minutes until I sighted the smoke from the bridge.

8. Q. Then, after you sighted the smoke what did you do?

A. Set sails to increase the speed.

9. Q. How long after you sighted the smoke was it until you fell in with the "Panama?"

A. Well, I judge it was about three-quarters of an hour, or 50 minutes; somewheres around there.

10. Q. What did you do after you neared the "Panama?"

A. Fired three shots.

11. Q. Then what did you do?

A. Lowered a boat and Ensign Dayton went aboard and took possession of her.

12. Q. Who were the boat's crew that pulled the boat over to the "Panama?"

A. I was one, and a man by the name of Nelson.

13. Q. Where is Nelson now?

A. I don't know where he is, sir.

14. Q. He is not employed either on the "Laurel" or the "Mangrove?"

A. No, sir.

15. Q. Where were you while the boat was being lowered?

A. In the boat, sir, ready to go off, and Mr. Dayton was standing on the gangway ready to jump in.

333 16. Q. How long did it take you to pull over to the "Panama?"

A. Not longer than two or three minutes, sir, because she was very close.

17. Q. Which boat did you use?

A. We used our dinghy.

18. Q. How long is she?

A. 15 or 16 feet.

19. Q. After you got alongside the "Panama," what did you do?

A. Shoved right off, sir. Mr. Dayton had a gangway ladder all ready over the side, and when Mr. Dayton got on the platform, he said to me, "Return to the ship."

20. Q. Had Mr. Dayton gotten on the deck of the "Panama" before you shoved away?

A. No, sir.

21. Q. How long were you in going back to the "Mangrove?"

A. Not longer than two or three minutes, sir.

22. Q. Where was the dinghy when the "Mangrove" got underway?

A. On the davits, sir, because the crew was all ready, and we hoisted her up right away.

23. Q. When did the "Mangrove" get underway?

A. I should judge about a little after 6.

24. Q. How long were you steaming from the time you got under way in company with the "Panama," until the shot was fired from the "Indiana?" About how long was it?

A. About an hour, sir.

25. Q. What was the condition as to light?

A. Dark, sir.

26. Q. Now, at the time you fell in with the "Panama," did you look to see if there were any vessels in sight?

A. Yes, sir; I did.

27. Q. What caused you to do it?

A. Because I was on the bridge, and they told me to look around.

334 28. Q. Who told you?

A. Mr. Dayton.

29. Q. Told you to do what?

A. To look around the horizon and see if there was anything in sight, and I reported a smoke a little on the starboard quarter.

30. Q. What did you look with?

A. Glass, sir.

31. Q. And could you see anything of any ship other than the "Panama?"

A. No, sir.

32. Q. What was all that you could see?

A. Smoke.

33. Q. Did you look in every direction?

A. Every direction, sir, and all around the horizon.

34. Q. You did that upon instruction from Ensign Dayton?

A. Yes, sir.

35. Q. Did you officially report to him the result of your observation?

A. Yes, sir.

36. Q. What was that report?

A. That I only could see smoke.

37. Q. What were your hours for being on duty?

A. The hours was from 4 to 6, and another one came on from 6 to 8, and then I went on again from 8 to 12, and spent 4 hours' watches, except from 4 to 8, when we spent 2 hours' watches, called dogwatches.

38. Q. You had the first dogwatch?

A. Yes; from 4 to 6.

39. Q. Had you gone on duty when the "Mangrove" left the "Indiana," proceeding to Key West?

A. No, sir.

335 40. Q. How long after you had left the "Indiana" was it before you went on duty?

A. Somewheres between 3 and 4 o'clock was the time we left, I think.

41. Q. Do you know about how long it was from the time you left the "Indiana" until you went on watch?

A. About 20 minutes.

42. Q. Were you on the bridge from 4 to 6?

A. Yes, sir.

43. Q. Your official duties required you to be there?

A. Yes, sir.

44. Q. Was Captain Everett on the bridge during that time?

A. No, sir.

45. Q. Where was he?

A. On the hurricane deck, forward of the pilot house.

46. Q. Did you hear any conversation in which Chaplin Cassard or Yeoman Murray took part?

A. No, sir; I did not.

47. Q. Did you see Chaplin Cassard on the bridge?

A. No, sir; not to my knowledge.

48. Q. When did you first make out the "Indiana" after you started towards her with the "Panama?" How long were you underway with the "Panama?"

A. I don't think it was longer than about 10 minutes from the time we got alongside the "Panama" until we got underway.

49. Q. You mean it was only about 10 minutes from the time the "Panama" stopped until the "Mangrove" got underway again and proceeded in the direction of the smoke?

A. Yes, sir.

50. Q. Then, how long was it after you got underway before you saw the "Indiana?"

A. I think somewheres around three-quarters of an hour.

336 51. Q. How was it as to light when you fell in with the "Indiana?"

A. It was dark, sir.

52. Q. Did you see search lights used?

A. I could not say that, sir.

Direct examination closed.

Cross-examination by Mr. KING:

1. Q. Did you see the "Indiana" between the time when Mr. Dayton went on board the "Panama" until the "Indiana's" gun was fired?

A. I could not see the "Indiana," but I could see the smoke. From the time we left with the "Panama" to go to the "Indiana," the only thing we could see was smoke, and we did not know exactly who it was, and we guessed it was the "Indiana." On that account we left in that direction, and found out it was the "Indiana."

2. Q. When did you first see the "Indiana" after you steamed toward that smoke?

A. I think—my judgment is—about 45 or 50 minutes before we could make out the "Indiana."

3. Q. How long were you before the "Indiana" fired her gun?

A. I could not tell you exactly how long it was because I was not on the watch at that time. I come off at 6 o'clock.

4. Q. Then, I understand that you waited for about 45 minutes after you started toward the "Indiana" when you saw her?

A. Not 45 minutes.

5. Q. How long was it, then?

A. No longer than 10 minutes—that is to say, when we got
337 into the boat and went towards her it was no longer than 10 minutes before we started with the "Panama;" it might have been 15 minutes, but not longer.

6. Q. How long was it after the "Panama" and the "Mangrove" started in the direction of the smoke that you saw the "Indiana?"

A. I think somewhere around 10 minutes; that is all I think it is—10 or 15 minutes—from the time we started to go in the direction of the "Indiana."

7. Q. Well, I mean after you started toward the direction of the "Indiana," how long was it then before you saw the "Indiana" itself?

A. Well, no more than 45 or 50 minutes, to my knowledge, when we could make her out.

8. Q. How long after that was the shot fired?

A. I don't know. I couldn't tell you anything about that, sir.

9. Q. Do you know why the sails were not set on the "Mangrove" when she went with the "Panama" toward the "Indiana?"

A. Well, I don't suppose it was necessary to set the sails.

10. Q. Why not?

A. Well, that is to say, after we captured the "Panama" she was going a good speed, and the captain, I suppose, did not set them; that is all.

11. Q. There was not so much of a hurry after you captured the "Panama" as while you were chasing her?

A. She was under a good speed, I think, and to my knowledge, I do

not know that the sails would draw going that way on account the wind was aft.

12. Q. When did you look around from the bridge to see if any vessels were in sight? Was that before Mr. Dayton went on board the "Panama?"

A. No, sir; after.

13. Q. But didn't you say that Mr. Dayton told you to look?

338 A. That was before he went aboard the ship, and after we come back from the "Panama" I went up on the bridge. Mr. Palmer told me to look around again. I told them that I couldn't see nothing else but smoke.

14. Q. Then, both Mr. Dayton and Mr. Palmer told you to look around for other vessels?

A. Yes, sir.

15. Q. What was the difference in the looks of this smoke when you looked at it by Mr. Dayton's order and when you looked at it by Mr. Palmer's order?

A. It was bigger, and Mr. Dayton's was smaller.

16. Q. Could you see nothing of the smokestack at the time?

A. No, sir.

17. Q. How do you estimate the time that it took you to row from the "Mangrove" to the "Panama" and back again?

A. Because it wasn't a great distance. I think it was only 150 yards to go down there.

18. Q. It might have been 5 minutes as well as three, mightn't it?

A. No, sir; I don't think so, because we was pulling good to get over there. We were in a hurry.

19. Q. When did you last talk over this matter with your comrades?

A. Well, we talked over it a few days after we found we were going to be examined again—about two or three weeks ago.

20. Q. Have you talked over it in the last day or two?

A. No; not me. The others might have talked over it. I heard something about it.

339 21. Q. Didn't you have a meeting together within the last three or four days and discuss the recollections with each other?

A. Well, we did a little.

22. Q. How long ago was that?

A. Not very long—about two or three weeks—but not within the last two or three days, to my knowledge.

23. Q. How much did you talk it over?

A. Well, we didn't talk it over much.

Cross-examination closed. Witness dismissed.

JOHN HANSEN.

CHARLES S. ELLMORE, a witness called on behalf of the officers and crew of the U. S. S. "Mangrove," having first been duly sworn to tell the whole truth and nothing but the truth, testified as follows:

Direct examination by Mr. BROWN:

1. Q. What is your name, age, and occupation?

A. Charles S. Ellmore is my name. I am 51 years of age and am a marine chief engineer.

2. Q. How long have you been a marine engineer?

A. 32 years.

3. Q. What experience have you had as a marine engineer?

A. I have been ten years chief machinist in the Navy, on board some of the principal vessels there was there, and have done a good deal of stationary engineering—in charge of electric railway in Baltimore, for instance. I have had 10 or 12 years' experience as engineer of a stationary plant on shore; ten years six months in the Navy as chief machinist.

4. Q. You have been chief engineer of the steam tug?

340 A. I have been chief engineer of this tug of Curry's here for a little over a year. I was assistant engineer on the "Fanita."

5. Q. Where were you employed during the Spanish war?

A. I was what you would term chief engineer of the "Mangrove," or in other words, chief machinist, which I had charge of on her. I had charge of her machinery.

6. Q. How long did you serve on the "Mangrove?"

A. During the war, with the exception of six days; I was transferred to the "Lancaster" six days before the end of the war.

7. Q. State what occurred on the afternoon of the 25th of April, A. D. 1898, from the time the "Mangrove" parted company with the "Indiana" until she fell in with the "Indiana" again that same night.

A. I don't know as I can state exactly what occurred, because I was a good deal of the time in the engine room. We left the "Indiana" at about 20 minutes to 4—I think it is on the engine-room log 20 minutes to 4—and we started for Key West. We had two passengers from the "Indiana" on board. I don't know what time this vessel was sighted, but I know she was sighted. I was in the engine room at the time she was sighted, and the time she was sighted I don't know. But we bore down on her anyway. She was going down across our starboard bow, and we changed our course to head her off, and there were three shots fired to stop her. She stopped at the third shot. There was a boat immediately lowered, and our first lieutenant, Mr. Dayton, went on board. The boat immediately returned to the ship as soon as he had stepped on the gangway ladder, was hooked on and hoisted up. As soon as it left the water we were underway, going back, as I understand, to New York to report. When we started the engines on this trip, going back

341 to New York, I think on the engine-room log it is 16 minutes past 6.

(Counsel for the "Indiana" objects to any testimony of this witness as to what was found on the engine-room log, as the log itself is best evidence of its contents.)

8. Q. What time was it when you started your engines to go with the "Panama" in the direction of the wind?

A. It was after 6 o'clock; as I said, that was my memory—about quarter past 6.

9. Q. How long was it from the time you left the "Indiana" till you heard the "Panama" was sighted?

A. Well, that I could not exactly say. I might not have heard of her when she was sighted; I was down in the engine room.

10. Q. When you came on deck what did you see of the "Panama?"

A. I saw a vessel bearing down on our starboard bow, and we were just then turning in her direction.

11. Q. How long was that from the time you left the "Indiana?"

A. That was over an hour, I am sure.

12. Q. What speed was the "Mangrove" making from the time she left the "Indiana" until she made this turn towards this vessel?

A. We were making full speed; I should say 8½ knots—not less.

13. Q. Was anything done to accelerate her speed after she made this turn toward the strange vessel?

A. Nothing particular, sir, because it was not necessary. There was no chase, you might say. She made hardly any turn at all. When we made the turn she was in reach of our guns then.

14. Q. How long did it take the boat that went from the "Mangrove" to the "Panama" to pull across to her?

342 A. I should not think over three minutes at the outside. We were very close.

15. Q. How near were you to the "Panama" when the boat started?

A. I should say inside of 200 yards.

16. Q. Did you see Mr. Dayton when he got out of the boat?

A. Yes, sir; I saw him when he got into the boat and when he got out of the boat. The boat was lowered with two men in her and he had to step over the gangway simply into the boat.

17. Q. Where was Mr. Dayton when the dinghy shoved off from the "Panama?"

A. On a ladder. Mr. Dayton was standing on a ladder of the "Panama" when the boat started back for the "Mangrove."

18. Q. What was done after the dinghy got back to the "Mangrove?"

A. It was hoisted immediately, and as soon as it was out of the water we got telegraph signal to go ahead. The "Panama" had already started then.

19. Q. Was the dinghy secured before the "Mangrove" got under way?

A. No, sir; as the boat left the water—hoisted up with the two men in her and secured afterwards.

20. Q. What speed did the "Mangrove" make after she got under way in company with the "Panama" on the way to the rest of the fleet?

A. All we could possibly do—between 8½ and 9 knots, because we could not keep up with the "Panama." Mr. Dayton evidently had to check her on one or two occasions.

21. Q. And the "Mangrove" doing all you could to keep up with her?

A. Yes; and with additional help in the fire room at that time.

343 22. Q. At the time shots were fired across the bow of the "Panama," and at any time after until the "Mangrove" got under way with the "Panama," did you see any other vessel in sight?

A. No, sir.

23. Q. What could you see?

A. I could see nothing but the "Panama."

24. Q. Did you look?

A. No; I didn't particularly look. I didn't have no opportunity of scanning the horizon on the upper deck, because I wasn't on it at all.

25. Q. Did you hear any orders given to any one to scan the horizon?

A. I did not, because I was below.

26. Q. Did you see the smoke of any vessel?

A. No, sir; I was not in position to scan the horizon at all. I was on the lower deck.

27. Q. Did you observe at any time any smoke of any vessel?

A. No, sir; I did not.

28. Q. Where were you?

A. I was in the corridor alongside the engine room and in the engine room. The "Mangrove" is enclosed, you know.

29. Q. Were you on duty?

A. I was not on duty, but it takes two men to run those engines proper, and I was relief watch, and it was my duty to assist in starting and stopping.

30. Q. And while you were off duty did you go and lend a hand to the engines during this chase?

A. Stopping and starting, yes, sir. That is all I had to do. She has a double engine, and one man can not stop her quickly, and it has always been the custom for two men to handle her—the man on duty and the relief.

344 31. Q. What speed was the "Mangrove" making when she changed her course to intercept the "Panama" until she fell in with her?

A. She had not changed in speed at all; that is, no bells had been received. But she slowed down afterwards when we were very close. We were not very far away when she changed her course.

32. Q. When did you slow down? How near were you to the "Panama" when you slowed down?

A. I should say six or seven hundred yards or more when the first shot was fired. She slowed down when the first shot was fired.

33. Q. How long does it take the "Mangrove" to get under full speed after having been at a dead stop, if she has a full head of steam on?

A. I would say she ought to be at maximum speed inside of five minutes. A heavy vessel could not do that, probably, but she is a light vessel. She could do it easily.

34. Q. What was the condition of the atmosphere when you fell in with the "Indiana"—was it light or dark?

A. It was dark.

35. Q. Did you see any vessels using searchlights?

A. I saw the vessel—the "Indiana"—using searchlight. She threw it on the "Panama," and on us too. The first intimation that I had of the "Indiana" being anywhere around she fired a shot.

36. Q. Do you remember the number of pounds of steam the "Mangrove" was carrying during this chase?

A. I don't know that I do, exactly. We generally carried about 80 pounds; that is, I think we were allowed 80 pounds, but we could not keep up steam. We could not keep a full amount, because her boilers were not sufficiently large for her engines.

345 37. Q. What was the maximum speed that she was capable of during the Spanish-American war, while you were on her?

A. From 8½ to 9 knots—that is, with forcing she could go 9 knots.

38. Q. Do you know of any men not on duty going into the fire room?

A. That is what I referred to just a minute ago. The men off duty volunteered and went below to help fire, in case she tried to get away from us, or anything like that.

39. Q. What speed did you say she made going back to where the "Indiana" was?

A. Not less than 8½ at any time; anywhere between 8½ or 9, but 8½ fully.

Direct examination closed.

Cross-examination by Mr. KING:

1. Q. Mr. Ellmore, will you please tell me how long it was from the time Mr. Dayton went to the "Panama" to the time when you heard the guns fired from the "Indiana?"

A. That would be a matter of guess for me. I should say the best part of an hour—between 50 and 60 minutes, anyway.

2. Q. Now, during all that time do I understand that you kept up the maximum speed of the vessel?

A. Yes, sir; not less than 8½ knots at any one time. We had additional help. I would say 8¾ knots with safety. I would say not less than 8½. If I was to guess close, I would say 8¾.

3. Q. And your volunteered firemen all that time kept at work?

346 A. One man at a time. One man done the firing regularly, and we had these additional men volunteered to help. That was done on the way back to Key West—two men below all the time.

4. Q. Before you captured the "Panama," did you have this volunteered help in the fire room?

A. No, sir. With the volunteered help, if I was going to be accurate, I might say safely she made nearer 9 knots than anything else.

5. Q. What need was there in keeping up this high rate of speed after she was captured?

A. Because the "Panama" was a swifter vessel than the "Mangrove," and we had to keep up with her. Mr. Dayton could have checked her, which of course he did.

6. Q. Didn't you know at the time that Mr. Dayton's orders were to keep the "Panama" back and within reach of the "Mangrove?"

A. I did not. I heard no orders that passed between the commanding officer and Mr. Dayton.

7. Q. Mr. Dayton could have kept the "Panama" back, could he not?

A. He did do it, evidently, and I say because on one or two occasions she forged ahead of us too far, and then without changing our speed she fell back to us again.

8. Q. How do you know you kept up this speed, which you have now estimated at 8¾ and from 8½ to 9?

A. That was her regular speed. We can run 8½ right along, with the regular watch in the fire room.

9. Q. In going toward the "Indiana" with the "Panama," did you use any sail power on the "Mangrove?"

A. That I could not swear to, sir, because I was not on the hurri-

347 cane deck after we got under way. If you know the "Mangrove," she is enclosed—the engine—all the way around. It is impossible to see the hurricane deck from the engine room, except on the forecastle. She is enclosed all the way around. She has 7 ports on each side all the

way around; that gives an uninterrupted broadside view, but I could not say about the sail being set.

10. Q. Was she under sail before she captured the "Panama."

A. That, sir, I could not swear to, not being in a position to observe.

11. Q. Didn't you go out of the engine room several times to see how the chase was going on?

A. Into the corridor. On each side of the engine room was a long corridor, all enclosed with the exception of these 7 ports. That gives an uninterrupted view below. You can put your head out and look, but you can not see up.

12. Q. Did you keep up this same speed all the way to Key West?

A. Yes, sir. As I said before, Mr. Dayton had to check the "Panama" many times on the way to Key West to allow us to keep up with her. She would forge ahead and allow us to catch up with her without our changing speed.

13. Q. Weren't you short of coal on the "Mangrove" that night?

A. No, sir; we had plenty—plenty to go to Key West with, and more. We were not what you would term short. We started to Key West for coaling, of course, but had ample to get there with.

14. Q. How do you estimate the time that it took Mr. Dayton to go from the "Mangrove" to the "Panama?"

348 A. Well, merely by the distance and my knowledge of pulling a boat. I was looking at him all the way over with my head out of a port.

15. Q. How long do you estimate that it took from the time when Mr. Dayton reached the "Panama" until you started ahead in the direction of the "Indiana?"

A. I would say 4 minutes. Probably that is too much. It was not more than 3 minutes for the boat to come back, and we started right away when the boat came back.

16. Q. Your recollection is that you started back at 6.16?

A. Yes; my recollection and the engine-room log. That is the only way I have to refresh my memory. I know there was always entries made in the engine-room log of stopping and starting.

(Counsel for officers and crew of the "Mangrove" objects to that portion of the testimony which refers to entries in the log, as the log itself is the best evidence of its contents.)

17. Q. Did you hear any conversation between Mr. Dayton on the "Panama" and Captain Everett on the "Mangrove?"

A. No, sir; I could not hear it—at least, if I could I did not. My hearing is not any too good, anyway. My hearing in one ear is imperfect.

Cross-examination closed. Witness dismissed.

CHARLES S. ELLMORE.

PHILIP LOUIS COSGROVE, Jr., a witness called on behalf of the officers and crew of the U. S. S. "Mangrove," having first been duly sworn to tell the whole truth and nothing but the truth, testified as follows:

Direct examination by Mr. BROWN:

1. Q. What is your name, age, and occupation?

A. At the present time?

2. Q. Yes, sir.

A. Philip Louis Cosgrove, junior, chief mate in the light-house service; 30 years old—will be next month.

3. Q. How long have you been employed on vessels connected with the light-house service?

A. About 11 years.

4. Q. What position, if any, did you hold on the "Mangrove" during the Spanish-American war?

A. Mate.

5. Q. Who was the other mate? Give his name in full.

A. John Peterson.

6. Q. Were there any other mates on the "Mangrove" besides you and John Peterson?

A. No, sir; well, there was what they called boatswain's mate, but then that is not a warrant officer.

7. Q. Will you state all the occurrences on the afternoon of April 25, 1898, from the time the "Mangrove" left the "Indiana" till she fell in with the "Indiana" again on that night?

A. Well, it was somewhere about 4 o'clock when we left the "Indiana"—about 4 o'clock that we left the "Indiana" and started northward and eastward towards Key West, about north by east. And at 4 o'clock I came off watch, and we was then about half a mile, I guess, from the "Indiana," coming towards Key West. So I went in my room and was there—I should judge it was very near 5 o'clock when I heard them talking on the deck about a vessel ahead of us on the starboard bow. So I got up and put on my clothes to go on deck, and I took a look at her with a long glass. I could not make out what she was, and Mr. Petersen and myself went on the bridge and looked at her. I went down to supper. When I came back from supper I saw positively then that it
350 was a Spanish flag on this vessel, and at that time I was in the pilot-house. Staid there until we got up and commenced firing shots at this vessel, which proved to be the "Panama." And while we was firing at her we fired two shots, and I had the long glass watching right aft of her to see about her propellers working, and after the third shot I reported to Captain Everett that she was still steaming ahead. Then he hailed this "Panama" and made—said something to the captain of her in regards that if he didn't stop that he would put the next shot through him and fire into the ship. And while I was there, also I saw one of the men aboard of her that was a little forward amidships of her decks, throw a tarpaulin off of a gun—it seemed to me a gun—and it seemed to be a seamen, and some one that looked to me to be an officer spoke to him or went up close to him and the man dropped the canvas or this piece of cloth, whatever it was, and went aft. There was also a lady there, that after we fired the third shot she threw her apron or part of her dress up to her face and she went aft. That was all with the naked eye. By that time the captain had given orders to have a dinghy ready, and we had the dinghy with the men all around her lowered to the water with two men placed inside the boat. And Mr. Dayton, the ensign, he was down on the guard, about three or four feet from the water, ready to step in when she touched the water. When she hit the water they unhooked her and Mr. Dayton got in, and they pulled to the starboard

side of the "Panama." She had on that starboard side a long ship ladder, or accommodating ladder they called it. And before Mr. Dayton went over there the captain gave me orders to watch and report when the boat would return. So when the boat left us and went over to the "Panama," and I noticed with the glass that Mr. Dayton stepped out on this platform or ladder, and the boat shoved right away and returned on board the
351 "Mangrove." And when she returned we had all hands, even the cook, out of the galley, to stand by the dinghy falls. We hooked on to her with the falls and at the same time we signalled to go ahead. While the steamer was going ahead we hoisted the dinghy up with two blocks and secured her, and Mr. Dayton hailed the "Mangrove" and wanted to know from our captain of the "Mangrove" what course or what direction, or how to steer—something of those words—and the captain told him to steer, I think, south-southwest, and while Mr. Dayton was going over to the "Panama" Mr. Palmer ordered me to search the horizon to see if anything was in sight, and to the southward and westward, or to the starboard of our bow, I could see a smoke with the long glass. Looking at it straight it looked like a large lump of smoke, but I could not tell whether it was on the land or water. Around Cuba you could see smoke on the land quite frequently there. I returned to the pilot house and reported to Mr. Palmer that nothing was in sight, and Captain Everett was standing alongside of Mr. Palmer on the starboard side of our pilot-house hurricane deck. The time was noted, too, when Mr. Dayton stepped on the deck, but I am not positive if it was the captain that gave that order or Mr. Palmer; I think it was about 6.08 or 6.07; it was something after 6 o'clock; and also there was a conversation on the hurricane deck there; it was this Chaplin Cassard and Yeoman—I think his name is Murray—they were passengers aboard the "Mangrove"—and our apothecary, Ralston, Captain Everett, this mate Peterson, and myself. This Chaplin Cassard—he shook hands with Captain Everett and congratulated him on the fine prize he had captured, and something in regard that it would be lots of money, or a big pile of money, that Captain Everett would receive. This yeoman—he had a conversation with me in regard to the "Panama," and stated that
352 all of the large ships on this blockade had been notified to keep a strict lookout for the "Panama," and he made the remark that "to think that such an insignificant ship as the 'Mangrove,'" or something similar to that, "should capture such a valuable prize and nothing in sight." We were steaming ahead; it was getting dark, and I was up on the bridge of the "Mangrove." This was between half-past six and seven o'clock, and I don't know how long I was up there until there was a shot fired. Captain Everett was standing alongside of me when he made the remark, "Where did that shot come from?" or "Who fired it?" or something like that, when I looked off just about where I thought the shot was fired and I could not see anything. He said he could not see the "Indiana," and asked me to look and I could not either. It wasn't long after that before we were hailed by an unknown vessel, and our captain—Captain Everett—and the captain of this unknown vessel were speaking, addressing one another by their first names, when a remark or something was made that it was the "Indiana," and also the captain talking; then I was positive that it was the "Indiana" by hearing the names

of each vessel exchanged. The "Indiana" hailed us and asked us what prize it was that we had captured; our captain answered, "The 'Panama,' of Barcelona," and them on the "Indiana" gave three cheers. The captain of the "Indiana" asked Captain Everett if it was any favor or anything he could do for him, and Captain Everett answered he could by loaning us a prize crew; that we had no side arms on board the boat, and that a prize crew would be appreciated—something of those words—and he said he would, and sent a prize crew aboard the "Panama." That is about the principal things, Mr. Brown. The only thing that I haven't said was in regard—I branched off two or three times, and haven't said about the sails being used.

353 8. Q. How long after you left the "Indiana" was it before you sighted this vessel which turned out to be the "Panama?"

A. About three-quarters of an hour or an hour.

9. Q. Then did you do anything on the "Mangrove" to increase her speed? If so, what was it?

A. Yes, sir; we set sails and she was forced ahead. We had to haul for about 4 or 5 points to starboard for this unknown smoke.

10. Q. Did the sails draw?

A. Yes, sir.

11. Q. What speed was the "Mangrove" making from the time she left the "Indiana" until she set sail?

A. She was making fully 8 knots.

12. Q. How much did the sails increase her speed, if any?

A. I should think about a knot, making about 9 knots. I was the one that asked Captain Everett to set those sails.

13. Q. How long was it altogether from the time the "Mangrove" stopped at the "Panama" till she got under way again in company with the "Panama?"

A. Well, I should judge that—I don't think it was over 5 minutes at the least. I don't think it could be more than that, because we were very close. I don't think it was over 100 or 150 yards from her, and the dinghy was a very small boat, a very light boat. With two men pulling, I don't think it would take over that. Mr. Dayton just made one step on the platform out of the boat when the boat was shoved off and returned aboard the "Mangrove."

14. Q. Did you hear any conversation between Mr. Dayton and Captain Everett while the dinghy was returning to the "Mangrove?"

A. Yes, sir.

15. Q. What was it?

354 A. Between Mr. Dayton and Captain Everett?

Q. Yes.

A. He hailed the "Mangrove" and wanted to know the course or direction or how to steer from where he was at, and if I am not mistaken Captain Everett answered south-southwest, I think. There was some more going on, but I was not paying much attention to them. I was taking a good look at the "Panama."

16. Q. And that conversation occurred while the dinghy was returning from the "Panama," was it?

A. Yes, sir.

17. Q. When were your sails on the "Mangrove" lowered?

A. I think after we fired the first shot.

18. Q. Did you have sails set while you were going with the "Panama" towards the "Indiana?"

A. No, sir.

19. Q. Why not?

A. Well, we lowered them down when we got close to the prize, and night was coming on and—well, we very seldom set sails in the nighttime unless it is very urgent, and, besides, sails would be in the way principally in the nighttime.

20. Q. What speed was the "Mangrove" making while going towards the "Indiana," after she had captured the "Panama?"

A. Well, I think she made about 8 knots; but then she was going pretty fast then, too.

21. Q. How was the wind? In what direction did it blow in relation to the smoke which you saw in the distance?

A. It would bring the smoke on the beam on either side—that is, when we were chasing the "Panama."

22. Q. While you were stopped and the "Panama" was stopped,
355 what direction was the wind blowing with relation to the "Indiana?"

A. Well, I think that the wind would blow the smoke three or four points on the starboard bow.

23. Q. What direction did the smoke that you saw at the time of the capture of the "Panama"—what direction did it bear?

A. It bore southward and westward.

24. Q. From what direction was the wind blowing?

A. I am not positive on that point; I think the wind was to the eastward of north, anyway.

25. Q. If the "Panama" had continued on the course which she was going at the time you fell in with her where would that have taken her, with relation to the smoke which you saw in the distance?

A. It would have taken her to the eastward of the smoke. I can explain that more thoroughly.

26. Q. I wish that you would.

A. The "Panama" was steering for Matanzas, and this unknown smoke was about—I should think about just off of Havana.

27. Q. Did you see Captain Everett during the time that you had changed your course to intercept the "Panama" until you fell in with the "Panama?"

A. I was with him all the time.

28. Q. Where was he?

A. He was, the best part of the time, on the port side of the pilot house, on the hurricane deck.

29. Q. Where the rest of the time?

A. When we were firing the shots at the "Panama" he was on
356 the port and starboard side, on the hurricane deck, on either side of the pilot house.

30. Q. Was he on the bridge at all during that time?

A. No, sir.

31. Q. Was he on the bridge at all from the time he came out, upon its having been reported that the "Panama" or a strange vessel was in sight, until the capture of the "Panama?"

A. He was not on the bridge; no, sir.

32. Q. How was the bridge of the "Mangrove," as compared to the hurricane deck, as a point of observation?

A. It is much higher, and the principal lookout place on the "Mangrove."

33. Q. Why was Captain Everett on the hurricane deck and not on the bridge?

A. If he had been on the bridge the foresail would have been in his way. He would have had to look through that.

34. Q. How did you communicate with the engine room on the "Mangrove?"

A. We have a speaking tube in the pilot house that leads to the engine room, and we also have telegraphs or registers that you move the handles.

35. Q. For giving orders to the engine room, where would be the most convenient place for the commanding officer to be?

A. In the pilot house or in front of the pilot house, because the commanding officers they just repeat their orders to the officer of the deck; he attends to seeing them executed.

36. Q. Did Captain Everett personally give the orders during this chase?

A. Yes, sir.

357 (Counsel for officers and crew of the "Mangrove" now hands to the witness a photograph, which photograph is marked "Exhibit A," and attached to his testimony, and interrogates the witness in regard to it, as follows:)

37. Q. Will you examine that photograph, Mr. Cosgrove, and state what it is?

A. Yes, sir; that is the "Mangrove;" but then she is painted here different from what she was during the war.

38. Q. Now, can you locate by anything on that picture where Captain Everett was during the chase and capture of the "Panama?"

A. Yes, sir; here is a party on the port side, here by the rigging. It is a party that is standing on the port side of the hurricane deck, just about three or four feet aft of the after part of the rigging on the hurricane deck.

39. Q. Now, how would a person in that position get from one side of the ship to the other?

A. By walking on this hurricane deck, just from one side to the other, just following the tread of the hurricane deck. He would go between the foremast and the pilot house.

40. Q. Where was the six-pounder gun on the port side?

A. Well, here is two men standing here, and I should judge about where this forward man is standing, by this port rigging.

41. Q. Does the dinghy show in that picture?

A. Yes, sir.

42. Q. Which is the dinghy that was used to board the "Panama?"

A. It is the forward boat of the two that is on the port side.

358 43. Q. Now, could that boat be seen while hanging from the davits, or while being lowered into the water, from any vessel on the starboard side of the "Mangrove?"

A. No, sir.

44. Q. Locate the bridge on the "Mangrove," on that picture.

A. There is an open door on the port side, and it is just about from three to four feet aft of it—the ladder to go on the bridge.

45. Q. Could a person on that bridge see the serving of the guns on the "Mangrove?"

A. Yes, sir; if they were served forward; that is, if he was standing on either side of the bridge, but if he was standing in the center of the bridge he could not.

46. Q. Was there any position on the bridge where he could stand and see the serving of the port and starboard six-pounders?

A. No, sir.

47. Q. Could he from the hurricane deck see the serving of both these guns at the same time?

A. Yes, sir.

48. Q. Where was the starboard six-pounder located?

A. Just on the starboard side from where I located it on the port side.

49. Q. You have seen that picture before and studied it with a view to locating these positions, have you not?

A. Yes, sir.

50. Q. Have you talked over with any of the other members of the crew of the "Mangrove" about this capture, from time to time?

A. Of the "Mangrove?" No, sir; I am not with the men on
359 the "Mangrove." Well, we have had chats about it, as to what we were going to get out of the prize, and also about the prize and in regard to the other ships.

51. Q. In the testimony of Yeoman Charles E. Murray, in reply to cross-question No. 23, he says, "I had a conversation with Mr. Cosgrove before Mr. Everett came on deck, relative to the battery of the 'Panama.' It was generally known that she carried guns, and it was remarked between Mr. Cassard and myself that she possibly might put up a fight. I said, 'Well, if she does I guess we are in for it,' and I then remarked that the 'Indiana' would help us out, because she was then coming up towards us." Did you hear Murray make such a statement as that in your presence?

A. No, sir.

52. Q. Did you hear either him or Chaplain Cassard say that the "Indiana" was in sight?

A. No, sir; she was not in sight.

53. Q. Did you report to Captain Everett or to any other person on the "Mangrove," that the "Indiana" was in sight at the time of this capture, or within a short time before or afterwards?

A. No, sir.

54. Q. In Chaplin Cassard's testimony, in reply to question 29, he says: "Well, I saw her constantly, except, of course, during the time I was looking at some other object specifically, but I heard Captain Everett ask whether any other ship was in sight, and the mate on the 'Mangrove' came up and reported to Captain Everett and Cadet Palmer, who was on the bridge, that the 'Indiana' was in sight." Did you make any such report as that?

A. No, sir.

55. Q. What vessel, if any, could you see at the time the
360 "Panama" was captured and a short time before or a short time afterwards?

A. I could not see any.

56. Q. Did you see anything?

A. I saw a smoke to the southward and westward; that is about the only thing I saw.

57. Q. How many times did you scan the horizon with a glass?

A. Well, I guess I was two or three minutes, I could not say—just waved the glass from side to side, making a circle like. That was a long telescope.

58. Q. What was the size of the dinghy boat that was used to board the "Panama" with?

A. I should say she was between 14 and 17 feet.

59. Q. How does she compare with the other boats on the "Mangrove?"

A. She was smaller than the other boats on the "Mangrove."

60. Q. Was she the smallest boat you had?

A. Yes, sir.

61. Q. How long a time elapsed from the time you got underway in company with the "Panama" till a shot was fired across the "Panama" and the "Mangrove?"

A. I should think it was about an hour.

62. Q. During all that time was the "Mangrove" steaming at best speed?

A. Yes, sir; that is the orders I received from Captain Everett.

63. Q. What orders was it?

A. To tell the engineers to go ahead as fast as possible, so that
361 he could pick up some of the ships and report his prize.

64. Q. Did you communicate that order to the engine room?

A. Yes, sir; I blew down the telephone and they answered, and I reported the captain's orders to them.

65. Q. From your observation of the speed the "Mangrove" was making, were those orders carried out?

A. Yes, sir. And besides, we were forcing the "Mangrove" to keep with the "Panama."

66. Q. How long a time elapsed from the time the dinghy boat left the "Mangrove" till it got over to the "Panama?"

A. I don't think it was over three minutes.

67. Q. And how long till it returned to the "Mangrove?"

A. I think about the same time.

68. Q. Did you hear Chaplain Cassard say anything as to whether there were any vessels in sight at the time of the capture?

A. I never heard him say there was anything in sight; no, sir.

69. Q. Did you hear him say anything in relation to it?

A. Yes, sir; he said there was nothing in sight. He was standing on the hurricane deck, and he shook hands with Captain Everett, congratulated him on the fine prize, and also made a remark that he would receive a big pile of money, or a large amount of money, for his prize. That is about what he said to Captain Everett.

70. Q. What did he say to you?

A. He didn't exactly say it to me; he said it to this Ralston that was there. He had the same conversation with the apothecary, Ralston, that he had with the captain. He told him that he had captured a fine prize,

and to think that the "Mangrove" could capture a prize like that and no other ship in sight.

362 71. Q. You are positive as to that latter remark—"and no other ship in sight?"

A. Quite positive, yes, sir; because, the reason I remember it, we were all together, and that was about the same conversation that I had with Yoeman Murray.

72. Q. What did Yoeman Murray say?

A. He was speaking to me, and he said something about the ships had received strict orders to watch out for this "Panama," and that all the big ships on the blockade was watching for her, and to think that such an insignificant boat, or small boat, would capture such a valuable prize, with nothing in sight.

Direct examination closed.

PHILIP LOUIS COSGROVE, JR.

Cross-examination by Mr. KING:

1. Q. When the boat that took Mr. Dayton over to the "Panama" got back to the "Mangrove," are you quite certain that the "Mangrove" started off immediately at full speed?

A. After the falls were hooked on, yes, sir.

2. Q. And how long did it take from the time when Mr. Dayton got aboard of the "Panama" until you started off?

A. I should judge about two or three minutes.

3. Q. Was this conversation which Mr. Dayton and Captain Everett had about the course of the "Panama" before or after the "Mangrove" started ahead?

A. I think we were laying still.

4. Q. How did this smoke look that you saw, when you saw a smoke in the direction of the "Indiana?"

A. Well, it looked like a round body of smoke.

5. Q. Was it high or low on the horizon?

A. It was—I guess it was about from 10 to 20 feet high from the horizon.

363 6. Q. Didn't you see the smokestack or the fighting tops of the "Indiana?"

A. No, sir.

7. Q. Was there any reason why if that smoke had been blown away you could not have seen the fighting tops or smokestacks of the "Indiana?"

A. No, sir; I had the long glass fixed right on the center of that smoke, and could not see anything at all but that smoke.

8. Q. Isn't it possible that the "Indiana" was within the line of vision, but hidden by the smoke?

A. No, sir.

9. Q. Why do you say that?

A. Because if that smoke had blowed away, with me having the long glass, I would undoubtedly have seen some part of her by spying directly at the center of that smoke, and the smoke would not have enveloped her at all. The smoke was paying away from her all the time. It was driving away from her.

10. Q. How do you know that it was blowing away from her, when you could not see her?

A. I said that that would have been the only way. If she had been in sight, that would have been the only way I could have seen her spires.

11. Q. Then why, so far as you saw, could not the "Indiana" have been behind that smoke and hidden by it?

A. Well, the only reason, because I took a long glass, and I think I was looking and could have seen anything from 18 to 20 miles and I could not see anything but smoke.

12. Q. It was a thick volume of smoke, was it not?

A. No, sir; it wasn't so thick from where I was. It was
364 ordinary smoke. I guess—well, it would look just like a fire or anything, just a smoke raising from the horizon.

13. Q. Did you see anything but one body of smoke?

A. That is all, sir.

14. Q. When did you first see the "Indiana" after that?

A. I didn't see her at all, sir.

15. Q. How long were you on deck after that?

A. After what, sir?

16. Q. After you saw this body of smoke?

A. Well, I have kinder forgot how the watches was arranged that night, but off and on from the pilot house to my room that was right next to it. I think that I was round about that part of the ship till about 10 o'clock that night. I don't remember what watch I had. I might have had a six-hour watch from midnight.

17. Q. After you headed for this smoke, did you not look to see whether the smoke became more clearly visible or whether the "Indiana" came in sight?

A. I was on the bridge there—the most of the time I was on the bridge, and most of the time I was looking towards the Panama, because the orders from Captain Everett was for me to keep a strict lookout on her in case anything would happen to Ensign Dayton on account of him being on board of her.

18. Q. Were you not concerned to get to the "Indiana" as soon as possible?

A. Yes, sir.

19. Q. Well, why did you not look for the "Indiana?"

A. Because I didn't know where the "Indiana" was, sir.

20. Q. You supposed that the "Indiana" was where that smoke was, did you not?

A. To the best of my recollections, I don't know, sir.

21. Q. Do you know why the course was steered toward that
365 smoke?

A. Yes, sir.

22. Q. Why?

A. To pick up some of the larger ships.

23. Q. Didn't you understand that that smoke was probably from the "Indiana?"

A. No, sir.

24. Q. In one of your answers to a preceding question, you said that

sails were not used unless very urgent. Was it not considered an urgent matter to get to some larger vessels of the fleet?

A. Yes, sir.

25. Q. Why then were sails not used?

A. Well, the reason that I answered that way, in the Light-House Service if we find that we are going to arrive off a bar in the nighttime and it is a bad bar and we have an hour before it is dark, we put the sails on her to cross that bar before dark.

26. Q. Did you observe anything in regard to Captain Everett's eyesight?

A. No, sir.

27. Q. When you were examined as a witness on this case on the 31st of May, 1898, you referred to a remark made you by Chief Yeoman Murray, but you made no mention of hearing any similar remark from Chaplain Cassard. Why did you consider it necessary at this time to state this fact in regard to Mr. Murray and to say nothing whatever about Mr. Cassard?

A. Well, that time I started in and stated only what happened to myself, and I did not think it was necessary then to bring in about Chaplain Cassard and him having that conversation up there. That is the only reason I left that part out.

366 28. Q. Do you mean to say that you heard, or did not hear, Mr. Cassard make that remark?

A. I heard him make that remark.

29. Q. If you heard that remark, then have you any other explanation to offer why you did not mention it in your deposition of May 31st, 1898?

A. The only reason I have to say is that I started in and stated all about myself only, and that is the only reason. It was fresh in my memory then, same as it is now.

30. Q. Did you consider Yeoman Murray's remark as anything about yourself?

A. Yes, sir.

31. Q. You say now that both Yeoman Murray and Chaplain Cassard spoke about the small vessel taking this large prize, and you add that they said, "and nothing in sight." Why did you not say in your deposition of May 31, 1898, that they made this remark?

A. Well, because Cassard, he made the remark about the captain and Ralston, and Murray made the remark to me, and the only thing, I was under the impression that Captain Everett and Mr. Ralston would make their statement in regard to those other two parties. I didn't think it was necessary to bring it in.

32. Q. You say in your former deposition that Chief Yeoman Murray remarked that the "Indiana" was out of signal distance and would not share the prize, and now you say that Yeoman Murray said, "and nothing in sight."

A. I think "or words to that effect," is the statement I made.

33. Q. Then you are not certain now that Yeoman Murray used the expression which in your direct examination to-day you spoke of him using?

367 A. I am quite positive beyond a doubt that he made the remark about either that "she is not in signal distance," or "not in

sight." I can not remember the exact words, but it struck me forcibly that he said the "Indiana" wasn't in sight at all.

34. Q. Now, Mr. Cosgrove, is it not possible that that is merely your conclusion about the meaning of what they said, and not what they said at all?

A. I am quite positive that they said those words that meant the "Indiana" was not in sight.

35. Q. Isn't it probable that what they said was that the "Mangrove" was fortunate, being so small a vessel, in taking so large a prize, and that you merely concluded that they meant that the "Indiana" was not in sight, or not in signal distance, although they failed to say that particular fact?

A. No, sir; I am quite positive that the "Indiana" was mentioned, either that she was not in signal distance, or that she was not in sight. It was words to that effect, I am positive beyond a doubt.

Cross-examination closed.

Redirect examination by Mr. BROWN:

1. Q. Was there any vessel in signal distance of the "Mangrove" at the time of, and 15 minutes before, and 10 or 15 minutes after, the capture of the "Panama?"

A. No, sir.

2. Q. What do you understand by signal distance?

A. Well, that flags can be seen off at a distance.

368 Recross-examination by Mr. KING:

1. Q. Do you mean to say also that no other vessel was in sight, as well as not in signal distance, referred in the last question but one?

A. There was nothing in sight.

Witness dismissed.

JAMES JONES, a witness called on behalf of the officers and crew of the U. S. S. "Mangrove," having first been duly sworn to tell the whole truth and nothing but the truth, testified as follows:

Direct examination by Mr. BROWN:

1. Q. What is your name, age, and present employment?

A. James Jones, cook on light-house tender "Laurel;" age, 49.

2. Q. Where were you employed on the 25th of April, 1898?

A. On board the steamer "Mangrove."

3. Q. Did you see Chaplain Cassard and Yeoman Murray aboard the "Mangrove" on that day?

A. Yes, sir; I saw the chaplain on board. I don't know his name right now.

4. Q. That was the day that the "Panama" was captured, was it not?

A. Yes, sir.

5. Q. Did you hear this chaplain say anything in relation to any other vessels being in sight; and if so, state to whom he said it and what it was that he said.

369 A. I heard him congratulate Captain Everett on his prize, but in regard to any other vessel being in sight, I would not say to

that, whether he said it or not; they had further conversation which I did not understand.

Witness dismissed.

JAMES JONES.

After the witness, James Jones, had been examined and appeared before me to sign his deposition, after hearing it read over, he requested that it be corrected by adding at the end of the answer to question five the following words: "They had further conversation which I did not hear."

[SEAL.] J. M. PHIPPS,
Notary Public.

370 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," "Indiana," and "Wilmington," appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

STATE OF FLORIDA,
County of Hillsborough:

On this 17th day of January, 1892, personally appeared before me, Ernest Berger, a notary public in and for the aforesaid county and State, and by consent of parties acting as commissioner in the above-mentioned cases, upon the call of the officers and men of the U. S. S. "Mangrove," John Peterson, who was first by me duly sworn to tell the truth, the whole truth, and nothing but the truth, and was thereupon examined by Jefferson B. Browne, esq., for the officers and men of the U. S. S. "Mangrove," and by William B. King, esq., for the United States and for the officers and men of the U. S. S. "Indiana," and the questions to said witness and his answers were thereupon duly taken down in shorthand by Carne C. Godwin, a disinterested amanuensis, agreed upon by the counsel aforesaid, and by him reduced to writing, and thereafter said deposition so reduced was read over by the said witness and subscribed in my presence.

Also, on the same day, personally appeared William H. Roy, upon call of the same parties, who being first by me duly sworn to tell the truth, the whole truth, and nothing but the truth, was thereupon examined by the same counsel, and his questions and answers taken down in shorthand by the same amanuensis and by him reduced to writing, and, on account of the necessary departure of said witness on public business, it was agreed by counsel that his deposition need not be signed by him after being reduced to writing.

[SEAL.] E. BERGER,
Notary Public in and for the State of Florida at Large.

371 JOHN PETERSON, being duly sworn, testified as follows:

Direct examination by Mr. BROWNE:

1. Q. How were you employed on April 25th, 1898?

A. I was on board the "Mangrove" as mate.

2. Q. How long have you been in the light-house service on light-house tenders?

A. Eight years.

3. Q. State what occurred on the afternoon of the 25th of April, beginning from the time you left the "Indiana" until you returned to the "Indiana" that night.

A. Well, we left the "Indiana" with orders to go to Key West and coal up, and steaming towards Key West, when I sighted a steamer and reported it to the commander, commanding officer, and he changed the course and said to change and steer down for her, and we fired three shots across her bow; then she stopped her engines and we loaded dingey, and not very far between the two ships, and the dingey started off and went to the "Panama" with Officer Dayton—Ensign Dayton—and the boat immediately returned to the "Mangrove" and was hoisted right up in the davits.

4. Q. About what time was it when you left the "Indiana" before you sighted the "Panama?"

A. Well, it was somewhere around four o'clock; I can't give the exact minute, but somewhere around four o'clock.

5. Q. Who was on watch as mate?

A. I was.

6. Q. How were the "Mangrove" and the "Indiana" steering with reference to each other when you parted company with the "Indiana?"

A. The "Indiana" was going to the westward and we was going to the eastward; we was going to the northeast and she was going to the southwest; she was going nearly west and we was heading up to
372 Key West; we was steering about north by east half east, something like that—north by east half east I think the course was.

7. Q. How long after leaving the "Indiana" was it before you sighted any steamer?

A. Well, I guess it was about three-quarters of an hour or hour—three-quarters of an hour or an hour, as close as I can recollect.

8. Q. How long was it from the time the dingey left the "Mangrove" until she returned and was hoisted up?

A. How long it was from she left——

9. Q. Yes.

A. That wasn't long; I couldn't give you the exact time, but it wasn't very long; we was laying close together; it wasn't long, because the boat just pulled right across to the "Panama" and the officer stepped out and the boat returned immediately.

10. Q. Where was Officer Dayton when the dingey shoved away from the "Panama?"

A. He was on board the "Panama."

11. Q. Whereabouts on her?

A. He walked right up to the bridge and took charge of the bridge.

12. Q. At the instant the dingey shoved away from the "Panama" where was Officer Dayton?

A. That I don't know; I saw him walk forward; I couldn't say just at the moment; he stepped out of the boat and stepped on board; I was just at the time not watching him.

13. Q. You say he stepped out of the boat and stepped on board?

A. Stepped on board in the "Panama."

14. Q. Could he step from the boat on to the "Panama's" deck?

A. No; there was a ladder, I know there was a gangway like; she had a gangway—gangway cut in the rail there.

373 15. Q. What speed was the "Mangrove" making after she changed her course towards the "Panama" until she fired the gun across her?

A. Before she set her sail she was making 8, and after she set her sail I guess she was making little over 9; they changed the course and set the sail and she made 9 or a little over.

16. Q. How long was it from the time you changed your course and proceeded in the direction of the "Panama" before you fired the shot across the bow of the "Panama?"

A. That I can't recollect; that question of course I can't remember; I don't recollect how long.

17. Q. Was it more than a minute and less than a year?

A. Yes; I guess it was three-quarters of an hour or an hour; something like that.

18. Q. What time was it when you captured the "Panama?"

A. I think it was about 6 o'clock; just about six o'clock or a little after; I don't know, but that is as near as I can get at it is six o'clock.

19. Q. How long were you steaming after you proceeded with the "Panama" until shot was fired from the "Indiana?"

A. Well, I should judge about nearly an hour—about 55 minutes or 50 minutes—something like that.

20. Q. What was the condition of the atmosphere as to light when you came up with the "Indiana?"

A. Well, it was dark; it was dark when we got up to the "Indiana" with the "Panama."

21. Q. Did you see any search light being used; and if so, by whom?

A. No; I didn't see no search light being used.

22. Q. How near was the "Mangrove" to the "Panama" when the boat was sent aboard of her?

A. I should judge about 300 yards—200 yards—300 yards—I guess 300 yards.

23. Q. Well, which is it?

374 A. 200 yards; I would call it 200 yards.

24. Q. At the time of the capture of the "Panama" by the "Mangrove" were any instructions given to you to do any particular thing; and if so, what was it and what did you do?

A. Captain Everett told me to take the glasses and see if there was anything in sight, and I looked all around the horizon and didn't see nothing only the "Indiana" smoke. I told him that. I says, "Captain, I can see the 'Indiana' smoke." And I know it was the "Indiana," because I seen her from the time we left her and the time of the capture; I know it from watching the smoke and watching the original direction which she was, but I could only see her smoke at the time of the capture.

25. Q. Did you look at this smoke with the glasses?
A. I did, sir; I looked right at the smoke.
26. Q. Could you distinguish any part of this vessel?
A. No, sir; couldn't see nothing but smoke.
27. Q. Chaplain Cassard states, "I heard Captain Everett ask whether any other ship was in sight, and a mate on the 'Mangrove' came up and reported to Captain Everett and Cadet Palmer, who was on the bridge, that the 'Indiana' was in sight." Did you make any such report to Captain Everett or Cadet Palmer?
A. No, sir; I think Mr. Cassard must have misunderstood me when I said I could see "Indiana" smoke; that was the report I made to the captain; I could see the smoke, but I could not see the vessel; must have misunderstood me.
28. Q. How was the firing on the "Mangrove" done during the chase and while you were proceeding to the "Indiana?"
A. You mean the steam?
375 29. Q. Who did the firing?
A. I don't know. Do you mean firing the guns?
30. Q. Firing in the fire room.
A. I don't know who was down there—some of the firemen—I don't know—just exactly know—their names.
31. Q. Was anybody there besides the regular force that was on watch?
A. As far as I can recollect, one of the sailors went down and helped them fire—down in the stokehold.
32. Q. Did you see Captain Everett during the time that you changed your course and proceeded towards the "Panama" until you fell in with the "Panama?"
A. Yes, I saw him; he was up all the time.
33. Q. Where was he?
A. Right on the bridge—right on the top. He was first standing on the lower bridge with the pilot house, and then he went up on the upper bridge, just when he completed the capture.
34. Q. After he completed the capture?
A. Yes.
35. Q. What kind of a view would a person standing on the upper bridge have when the sails were set?
A. Well, he would have a view of some parts of the vessel, but not all; look foward, standing on the bridge looking foward and aft—if you stand on the side the sail is on you can't see nowhere. The sail would cover the whole thing; but if you stand on the lee side you can't see nothing, only just sideways—side view—and the weather side you can see along the vessel.
36. Q. Where is the hurricane deck of the "Mangrove" located?
A. That is where the pilot house stands—the upper deck.
37. Q. Where would a person have the better view while the sails
376 were set, from the hurricane deck or from the bridge?
A. Well, I should think, from the bridge; although may do the same thing because just a little higher—have the same view from the lower deck as you can from the bridge.
38. Q. Isn't the hurricane deck foward of the foresail?
A. You can step foward—let me see—no, the forward mast is ahead of

the hurricane deck—and the sail was stretched from the mast good deal on the hurricane deck, you know, past the pilot house.

Cross-examination by Mr. KING:

39. Q. Mr. Peterson, what did you go up to Key West for?

A. At what time?

40. Q. When you started out that afternoon.

A. For coal. We got orders from the "Indiana" to go to Key West and coal up.

41. Q. Was your coal pretty well used up?

A. No, we had good deal of coal left yet, but then we was going to go to Porto Rico and was going to take a good supply of coal aboard.

42. Q. When you first sighted the steamer "Panama," that turned out to be the "Panama," can you tell me whether there was any land in sight at that time?

A. I think it was. I don't recollect, but I think that land was in sight.

43. Q. What land was it?

A. Cuba.

44. Q. And can you tell me whether the "Indiana" was in sight?

A. No, the "Indiana" was not in sight—not when I sighted the "Panama." I couldn't see her at all.

45. Q. As you moved down to take the "Panama," your motion—was your motion away from the Cuban coast or toward it?

377 A. No, we was going in toward it—we wasn't going. Say this is the land: the "Panama" was coming parallel with the land, steering west, and the "Indiana" was to the westward of the "Mangrove" at the side, and the "Mangrove" was steering north by east half east and then she changed her course, brought it in to about east, toward the "Panama."

46. Q. And what direction was the land?

A. The land was bearing from us about due south.

47. Q. What was the size of that dingey that pulled from the "Mangrove" to the "Panama?"

A. She is about 12 feet.

48. Q. What color was she?

A. White.

49. Q. After Mr. Dayton got on board the "Panama," did you hear conversation between him and Captain Everett?

A. After Mr. Dayton stepped on board the "Panama?"

50. Q. Yes.

A. No; couldn't be, because he was on the "Panama" and Everett was on the—oh, speaking tube; no, I didn't hear any.

51. Q. When did you see the "Indiana" first after you sighted the "Panama?"

A. About—I guess we had been steaming about 10 or 15 minutes.

52. Q. Was the "Mangrove" using her sails after the capture?

A. No, sir.

53. Q. When were the sails taken in?

A. When the capture was complete; we lowered them when we fired at the "Panama," when she stopped—when the "Panama" stopped her engines, then we lowered the sails.

54. Q. What direction was the smoke of the "Panama" when you saw it?

A. About due west.

55. Q. Rather south of due west, wasn't it?

A. No; it must have been somewhere pretty near due west, because the land runs east and west there; she could not have been south; we wasn't over, I guess, 30 miles from Havana, 35—somewheres along there.

378

56. Q. What did you first see of the "Indiana?"

A. Well, I wasn't looking just for her all the time; when I saw her, I could see her spars and upper hull when I first saw her after we steamed toward her.

57. Q. When you speak about the hurricane deck of the "Mangrove," you mean the same as what you call the lower bridge, don't you?

A. Yes; where the pilot house stands.

58. Q. When you reported that you saw the smoke from the "Indiana," isn't it possible that what you said was that you saw the "Indiana," that was her smoke?

A. I said that I could see the "Indiana" smoke; that is the word I spoke, "Indiana smoke."

58. Q. You know who loaded the guns that were fired at the "Panama?"

A. Man by the name of Albert Chip Chase.

59. Q. Do you know that he loaded all three of them?

A. That, I couldn't say; I know that he fired the shots, but if he fired them all or loaded them all I don't know; but I know he fired one of them—I saw that.

60. Q. Did you continue to see the "Indiana" after you first sighted her after the capture?

A. After the capture, yes; we steamed right up toward her.

61. Q. The "Mangrove" could not make as good time without her sails as with them, could she?

A. No; she would make better time with the sails if there was wind—make difference of a knot—knot and a half, according to the breeze.

62. Q. Don't you think it was longer than 50 minutes from the time when the boat from the "Mangrove" went to the "Panama" until the "Indiana" fired her shot?

379

A. From we started to steam toward the "Indiana," or from the time the boat left to go to the "Panama," you see that would make a difference of a few minutes, anyhow.

63. Q. I mean from the time when the boat reached the "Panama" until the shot was heard from the "Indiana." Was it more than 50 minutes——

A. Well, I should think it was about an hour nearly, but more than 50 minutes; yes, just about an hour—55 minutes or an hour, something like that—an hour.

JOHN PETERSON.

380 WILLIAM H. ROY, being duly sworn, testified as follows:

Direct examination by Mr. BROWNE:

1. Q. What is your name, age, and occupation?

A. William H. Roy, name; age, 26; occupation, marine engineer.

2. Q. Where are you employed at present, and how long have you been employed on that duty?

A. In light-house service; been employed in light-house service for about eight years and a half.

3. Q. On what vessel are you employed, and how long have you been employed on that vessel?

A. No; on the "Mangrove."

4. Q. How long have you been employed on her?

A. This last time I was on her was from September 10th, '99.

5. Q. How long were you on her prior to that?

A. From the time she came out—that was January, '98—until May, '99, I think it was; I think that was the date; pretty sure it was.

6. Q. In what capacity were you employed on her on the 25th of April, 1898?

A. Oiler.

7. Q. What is your position aboard the "Mangrove" now?

A. Engineer.

8. Q. How long have you been engineer of the "Mangrove?"

A. I was assistant engineer of her from October, '98, until May, '99; from September 10th, '99, until the present time, chief.

9. Q. What is the speed of the "Mangrove?"

A. Well, if the "Mangrove" has a clean bottom, in good condition, her speed in smooth weather is about 9 knots and a half.

10. Q. What speed did the "Mangrove" make on the afternoon of April 25th, 1898, from the time she shaped her course for the "Panama" until she reached the "Panama?"

A. I should say about 8 knots; perhaps more.

381 11. Q. Do you reach that opinion from the revolutions that she was making?

(Objected to as leading. Question withdrawn.)

12. Q. How do sails affect the speed of the "Mangrove?"

A. Steamboat, the sails take the thrust off the engine for the first thing, consequently you get better results out of the engine; force of the wind also helps to drive the hull along; that is, in the sails.

13. Q. How much will it affect the speed of the "Mangrove" if the sails are set and drawing?

A. I should say about three-quarters of a knot; that much an hour.

14. Q. And if the sails on the "Mangrove" were set at the time she gave chase to the "Panama" and were drawing, what would have been the speed of the "Mangrove" from the time she started the chase of the "Panama" until she captured her?

A. About 8 and three-quarters.

(Question objected to, as witness has already stated.)

15. Q. About how much—what is your answer?

A. 8 and three-quarters.

16. Q Where is the engine room of the "Mangrove" situated?

A. The levers, the throttle valves, and main cylinders are on the main deck; of course the rest of it is down below.

17. Q. Where did your duties require you to be during the chase of the "Panama?"

A. From the fire room, the lower engine room, and the upper engine room.

18. Q. Then, you were not in a position to see what was occurring during that chase?

A. No, sir.

382 19. Q. Do you know when the "Mangrove" got under way after the capture of the "Panama?"

A. No, sir.

20. Q. I don't mean the hour, but do you know when that happened; were you cognizant of the fact that the "Mangrove" got under way?

A. The time she got under way?

21. Q. When the "Mangrove" captured the "Panama" she stopped her engines?

A. Yes, sir; she stopped her engines to throw over the boat, I think; I won't be too sure about that.

22. Q. When she got under way again after the capture of the "Panama" how long was it before a shot was fired from the "Indiana?"

A. I don't know exactly, but I should judge about forty-five or fifty minutes; something of that kind.

Cross-examination by Mr. KING:

23. Q. Now think carefully, and state whether in your opinion it wasn't longer than forty-five or fifty minutes.

A. That I don't know; you see the oiler aboard that ship has got to attend, water, and oil the engines, and that kept me from the fire room to the engine room very near all the time, and I couldn't see the time; I didn't see any time.

24. Q. What is your idea of the length of time that the "Mangrove" stopped?

A. The "Mangrove" stopped a very short time—mighty short time; don't know how long it was, but I know it was very short.

25. Q. Was it over five minutes?

A. The best of my judgment, I don't believe it was; of course I couldn't positively say, you know, but I don't think it was.

383 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
OFFICERS AND CREW OF THE U. S. S. "MANGROVE." } No. 130.

OFFICERS AND ENLISTED MEN OF THE U. S. S. "NEW YORK," "Indiana," and "Wilmington," appellants,
v.
OFFICERS AND CREW OF U. S. S. "MANGROVE," APPELLEES. } No. 174.

STATE OF FLORIDA, *County of Duval:*

On this the 18th day of January, A. D. 1902, personally came before me, A. W. Cockrell, jr., esq., a notary public in and for said county and State, by consent of the parties acting as commissioner in the above-entitled cause, and, upon call of the officers of the U. S. S. "Mangrove," Charles B. Munson, who was first by me duly sworn to tell the truth, the whole truth, and nothing but the truth, was then and there examined by Jefferson B. Browne, esq., for the officers of the U. S. S. "Mangrove,"
384 and by William B. King, esq., for the officers and men of the U. S. S. "Indiana" and for the United States, and the questions

to and the answers thereto of the said witness and other officers were thereupon taken down in shorthand by W. G. Powell, a disinterested amanuensis, and by direction of counsel aforesaid by him reduced to writing, and thereafter, after the said depositions were so reduced to writing, the same were read over by the said witness and subscribed to in my presence.

By Mr. BROWNE:

Q. What is your name, age, and occupation?

A. Charles B. Munson; age, 49; my present occupation is checking clerk for the Clyde Steamship Company in Jacksonville.

Q. 2. What is your profession or calling?

A. I am a mariner.

Q. 3. What service have you had as such?

A. I have been in the China, West India, and coastwise trade, the Cuban and Mexican trade; have also been in the U. S. Revenue-Cutter Service.

Q. 4. In what capacity did you serve in the United States Revenue-Cutter Service?

A. Third lieutenant.

Q. 5. How were you employed during the Spanish-American war?

A. I was a pilot. I was sent for by Admiral Sampson, who telegraphed me that he wanted my services for ten days. I reported at once for duty in answer to his telegram.

Q. 6. What ships in the Spanish-American war did you serve on?

A. I was six weeks on the "Indiana." I was then transferred to the "Brooklyn," on the south side of the island of Cuba, in the blockade off Santiago. I was also on the "Merrimac" until Mr. Hobson was ready to take charge of her, and left her the next morning at entrance to Santiago Harbor. When I left her I went aboard the "New York," and remained on her until the 18th day of June, when I took passage in the "Armenia" to Key West.

Q. 7. What ship did you take service on first?

A. On the "Indiana," as pilot.

385 Q. 7. What date did you join the "Indiana?"

A. The 25th day of April, 1898, off the blockade of Havana.

Q. 8. How did you go aboard the "Indiana"—from what vessel?

A. From the "New York." Was taken from the "New York" by the "Mangrove."

Q. 9. What time of day was it when you went aboard the "Indiana" from the "Mangrove?"

A. It was in the afternoon; do not remember exactly what time it was, but it was about the middle of the afternoon.

Q. 10. Did you see the "Mangrove" when she and the "Indiana" parted company on the afternoon of the 25th of April?

A. Yes. I was on the quarter-deck.

Q. 11. Which way did they steam with regard to each other?

A. The "Mangrove" steamed to the northeast by north—something like that; the "Indiana" stood to the westward along the coast; might have been a little southerly of that course.

Q. How long did the "Indiana" continue that course—until you sighted the "Panama?"

A. That is a pretty hard question; could not tell you how long it was, but should judge probably between half an hour and an hour; probably an hour.

Q. 12. State what occurred when you sighted the "Panama"—at the time the lookout reported the smoke.

A. I went aloft to the fighting top with a glass. I could make out the top of her stack, and that she was a bark-rigged steamer, and I came down and reported to Captain Taylor what I saw—that she looked like the "Panama."

Q. 13. Did you see the "Mangrove" when she came up to the "Panama?"

A. I could see the two vessels. I was in the lookout at the time. We started in chase after I reported to Captain Taylor. I took her to be the "Panama," and we started in chase. And afterwards I came down and told Captain Taylor I had seen the "Mangrove" fire a shot. I could see the smoke, and I think he said he could see the smoke also, but am not positive as to that.

386 Q. 14. How long a time elapsed from the time this gun was fired until the "Mangrove" and the "Panama" steamed towards the "Indiana"—started towards the "Indiana?"

A. I could not say positively whether the "Mangrove" stopped or not, the distance was so great, but I saw her make a turn as though she was following the "Panama."

Q. 15. How long a time elapsed from the time you saw the "Mangrove" make this turn until the shot was fired from the "Indiana" across the bows of the "Panama" or over the "Panama?"

A. I think that shot was fired some time about sundown; I think it was after sundown when that shot was fired to bring her to; it was somewhere about a half an hour before sundown when they made the turn; it was not long before sundown.

Q. 16. What speed did the "Indiana" make from the time you started in on this chase of the "Panama" until this shot was fired across the bows or over the "Panama?"

A. I think she was doing her best, and that would not be over eight knots, somewhere in that neighborhood, eight and a half probably; but I could not judge of her speed exactly; I know when she was going down to Porto Rico she lagged behind the fleet, but she was doing her best when she was in the chase.

Q. 17. At the time the turn was made by the "Mangrove" after falling in with the "Panama," could you have read signals made by the "Mangrove" from the "Indiana?"

By Mr. KING. We object to the question on the ground that witness has not shown himself competent to answer the question, as it has not been shown that he is acquainted with naval signals.

By Mr. BROWNE. We withdraw the question.

By Mr. BROWNE. Q. 18. Have you ever had any experience in reading signals from vessels?

A. Yes; but not in late years, as I have been in the coastwise trade; but when I was in the foreign trade I had occasion to use signals.

387 Q. 19. At the time the "Mangrove" made the turn after falling in with the "Panama," could you have distinguished the

colors of the different flags hoisted on the "Mangrove" from the "Indiana?"

A. I do not think I could.

Cross-examination by Mr. KING:

Q. 20. Captain Munson, do you know how large the regulation naval signal flags are?

A. No, I do not.

Q. 21. You state that after the "Mangrove" left the "Indiana" you reported smoke to Captain Taylor, and that you supposed it was the "Panama;" were you any further away from the "Panama" at any time until her capture than you were at that time?

A. I do not know as to that; the "Mangrove" was going to the northward all the time and we did not commence the chase until some little time after that.

Q. 22. Did you lose sight of the "Panama" at all?

A. Not for very long; you could not see her from the deck of the "Indiana;" but when I reported her they said they could see her from the bridge.

Q. 22. Then you say you could see the "Panama" most of the time after you reported her?

A. Yes; but I didn't stay aloft all the time; I would come down, report to Captain Taylor, and go back again.

Q. 23. When did you begin to get nearer to the "Panama" after you reported her?

A. We did not start the chase until some time after I had reported her?

Q. 24. How long afterwards did you start the chase?

A. I should say it was over half an hour; we had to signal the "New York" for permission to go into the chase; this is the reason we did not start after her right way.

Q. 25. Could you see the "Panama" from the masthead most of the time?

A. Yes; I could see her when I was aloft.

388 Q. 26. When you started in chase of her, when did you next see the "Panama?"

A. When the vessels came together I could see more and more of her; I did not lose sight of her all the time.

Q. 27. Do you remember any time when you could see the "Panama" and the "Mangrove?"

A. They seemed to be practically in the same position; they looked to me to be in the same position until the "Mangrove" turned.

Q. 28. At the time of the turn of the "Mangrove," what could you see of the two vessels?

A. I could make out the hull of the "Mangrove" and could see the space between her forecastle and bridge.

Q. 29. At the time of the turn could you see her masts?

A. I think I could.

Q. 30. Do you know how large that space is between her forecastle and bridge?

A. I should judge it is 22 to 24 feet—something like that—as near as I can judge; but it has been some time since I have seen the vessel.

Q. 31. How wide was her pilot house?

A. I should judge 10 to 12 feet.

Q. 32. Could you distinguish her pilot house when she made the turn?

A. I could see the side of her pilot house as she made the turn.

Q. 33. Was she facing you bows on at any time?

A. She was a little on her starboard bow.

Q. 34. Could you see the bridge of the "Mangrove?"

A. I do not know whether she had a bridge; think she just had a pilot house; I don't remember seeing her bridge; it was, perhaps, too small to see.

Q. 35. Could you have seen a bridge of 8 or 10 feet or thereabouts on the "Mangrove" at that time?

A. It would have depended a good deal on the color of it.

Q. 36. If it had been a bright color, then, could you have seen
389 it?

A. No; think it would have shown up better if it had been black.

Q. 37. Are you used to estimating distances at sea?

A. Yes; I can guess at the distance between ships.

Q. 38. When the "Mangrove" changed her course, how far were you then from the "Panama?"

A. I should judge about five miles.

Q. 39. How far were you from the "Mangrove?"

A. The "Mangrove" was astern of the "Panama;" there was an open space there between the two ships.

Q. 40. Was the "Mangrove" nearer to the "Indiana" than the "Panama" was to the "Indiana?"

A. The "Panama" was between the two ships.

Q. 41. Now, are you sure about that? When the turn was made was the "Panama" nearer to you, or was the "Mangrove" nearer to you?

A. I could not say now; it has been so long ago it is impossible to recollect, but it seems to me that the "Panama" was nearer than the "Mangrove."

Q. 42. After the turn was completed, which one was the nearest to you, the "Panama" or the "Mangrove?"

A. I think they both were about the same distance, as near as I can judge; the "Indiana" was coming up all the time.

Q. 43. Was it after the turn that you say the vessels seemed to be lying in the water as if they had stopped?

A. Yes; I think it was after the gun was fired and she made a turn, but I could not swear positively whether they stopped or not.

Q. 44. Did they look as if they had stopped?

A. Yes; they looked as if they were parallel with one another, and the turn was made.

Q. 45. At that time was the "Panama" between you and the "Mangrove," or the "Mangrove" between you and the "Panama?"

A. The "Panama" was between us.

46. Q. How clear was the water at that time?

A. The northward atmosphere was very clear, to the southward it was hazy.

Q. 47. In what direction were you from the "Panama" and "Mangrove" after the turn was completed?

A. I should judge, but I would not be positive about it, that they bore northeast by north.

Q. 48. Where was the nearest land?

A. Cuba.

Q. 49. Was that in sight from the "Indiana?"

A. It was hazy and I could not see the land.

Q. 50. What direction was the land with regard to the positions of the "Mangrove" and "Indiana?"

A. It was to the southward.

Q. 51. Looking from the "Mangrove" in the direction of the "Indiana," would there be any land behind the "Indiana?"

A. Yes; the whole coast of Cuba and the high mainland.

Q. 52. Have you had any experience trying to see vessels along the Cuban coast or in the vicinity of the Cuban coast?

A. Yes; been running there for years between Key West and Havana, and between New York and Havana.

Q. 53. Is it easy or difficult to see vessels near port, looking the direction of the Cuban coast?

A. It is hard to distinguish vessels lying close in; at a distance of four or five miles it would be hard to see one.

Q. 54. Would it have been easier to have seen the "Mangrove" from the "Indiana" or the "Indiana" from the "Mangrove," taking into consideration the haziness which you have spoken of and the land?

A. I think I could have seen the "Panama" and the "Mangrove" plainer than they could have seen the "Indiana."

Q. 55. How clear was it on that day looking towards the "Mangrove?"

A. It was quite clear; there was a good clear horizon.

Q. 56. You have had no experience in reading naval signals?

A. No; only I saw them used during the Spanish-American war.

Q. 57. After the "Mangrove" made the turn, could the sound of a gun have been heard from the "Mangrove" on the Indiana?"

A. I do not know how far you can hear one of those guns. I
391 did not hear the gun; I only saw the smoke from where I was aloft.

Q. 58. What did you see of the smoke?

A. I just saw a little white haze, that is all, and run right down from aloft and reported to Captain Taylor that she had fired.

Q. 59. Then, after you saw the flash, you did not wait to see if she answered, or to hear the report of the gun?

A. No; I was excited by the chase and went right down and reported to Captain Taylor.

Q. 60. Can you state positively that the "Indiana" was making as much as eight and a half knots per hour?

A. I could not swear to that; I did not see her log; but I should judge she was making that or more.

Q. 61. From the time the "Indiana" turned towards the "Mangrove," do you know whether or not she kept up the same rate of speed the whole distance?

A. I think she kept up speed until she got nearly to the "Panama," when she slowed down.

Q. 62. Will you please look at this paper which I now hand you and tell me who wrote that paper?

Letter dated Jan. 13, 1901, from witness to C. & W. B. King is here handed to witness, who examines same and replies:

A. Yes; that is my writing and that is my signature.

By Mr. KING. We offer this paper in evidence, same being filed in evidence and marked "Exhibit A."

By Mr. BROWNE. We object to the introduction in evidence of the said paper writing on the ground that the same is immaterial and irrelevant.

By Mr. KING:

Q. 63. Please examine paper writing which I now hand you and tell me whose signature to that paper writing is.

Letter of Jan. 15, 1901, to C. & W. B. King, signed by witness, is here handed witness, who examines same and replies:

A. That is my signature.

Q. 64. Whose handwriting in pencil are the interlineations in
392 that letter?

A. Mine.

By Mr. KING. The said paper writing is here offered in evidence, same filed, and marked "Exhibit B."

By Mr. BROWNE. We object to the introduction in evidence of the said paper writing on the ground that the same is immaterial and irrelevant.

By Mr. KING:

Q. 65. Have you just read those two letters?

A. Yes; I have read them.

Q. 66. Do you wish to make any further statement in connection with them?

A. I am not positive about the time stated as 5.30; otherwise I consider the letter as correct.

Q. 67. Now, will you please state, from your experience as a seafaring man, whether about sunset you can see an object better at sea when you are looking in the direction of the setting sun than you can looking in the direction from the sun?

A. Looking away from the sun; of course in looking towards the sun I could not see as well.

Redirect by Mr. BROWNE:

Q. 68. When you first sighted the "Panama" where was the "Mangrove?"

A. She was steaming towards Key West, to the northward and eastward of us.

Q. 69. How long is the side of the "Mangrove" pilot house?

A. I think it is about 28 feet; somewhere in that neighborhood.

Q. 70. Can you distinguish an object at sea further than you can distinguish its color?

A. Yes; I think I could see a vessel further off than I could tell what

color it was, but if it was dark green or black, I could not be able to tell whether it was black or not.

C. B. MUNSON.

Sworn to and subscribed before me this 18th day of January, A. D. 1902.

A. W. COCKRELL, Jr.,
Notary Public, State of Florida at Large,
Acting as Commissioner in above-stated Cause.

(Commission expires Sept. 10, 1905.)

393 [The Clyde Steamship Company. New York, Charleston and Florida Lines. Clyde New England and Southern Lines. St. Johns River (DeBary) Line. Wm. P. Clyde & Co., general agents, 12 South Delaware avenue, Philadelphia; 19 State street, New York. Theo. G. Eger, gen'l manager, 19 State street, New York. John L. Howard, superintendent, Jacksonville, Fla. C. P. Lovell, Ass't Florida Sup't. Thos. D. Haley, local freight agent, Jacksonville, Fla.]

JACKSONVILLE, FLA., *Jan. 13, 1901.*

Mess. C. & WM. B. KING,
Washington, D. C.

GENTLEMEN: Yours of 11th inst. to hand. I reported the ship, when sighted, to Capt. Taylor as being the "Panama," and will gladly give you all information desired. The "Indiana" was in signal distance, and no other.

I will forward statement so that you will receive it by 17th.

Do you think there is a possibility for me to claim pilotage for piloting "Merrimac" for Lieut. Hobson? I have never received any credit for the part I took.

I am, respectfully,

Capt. C. B. MUNSON.

C/o Clyde S. S. Co., Jaxville, Fla.

394 JACKSONVILLE, FLA., *Jan. 15th, 1901.*

Mess. CHAS. & WM. B. KING,
Washington, D. C.

GENTLEMEN: In reply to your letter of the 11th inst. I make the following statement:

On the afternoon of April 25th, 1898, I was transferred from U. S. F. S. "New York" to the battle ship "Indiana" as pilot, the U. S. S. "Mangrove" taking me to the "Indiana." Later in the afternoon the "Mangrove" steamed for Key West and had not gotten out of sight when a steamer smoke was reported to the northeast. I went aloft, at Capt. Taylor's request, to see if I could make out what vessel it was, I being acquainted with rigs of vessels frequenting those waters. The "Mangrove" was then heading about north ½ east on her course for Key West. I made out a large barkentine-rigged steamer, which I knew to be the "Panama" by her rig. I reported to Capt. Taylor that it looked like the "Panama." He then signaled the flagship permission to go in chase. The steamer was then about twelve miles off and heading in for the land. We then headed for the stranger, the "Mangrove" still keeping on her course for Key West, evidently not having sighted

the stranger. When we were within four or five miles of the stranger and the "Mangrove" about three miles from us on our port bow, she suddenly changed her course so as to hail the stranger. I should judge that this happened at about 5.30 p. m. The "Indiana" was heading for the stranger from time we left the blockading fleet. About twenty-five minutes before sunset I saw smoke from a gun on the "Mangrove." The stranger swung off her course, and after a few minutes she kept on her way with her Spanish colors flying, "Indiana" still heading for her. We were then about one mile off, and seeing her keep on her course we fired a shot and ordered her to heave to and haul down her colors. A prize crew was then put on board from "Indiana" and the "Panama" sent to Key West.

The "Mangrove" was ½ mile astern of "Panama" when "Indiana" brought her to.

Yours, very respectfully, C. B. MUNSON, *Pilot.*

395 (Indorsed:) In the Supreme Court of the United States. The United States vs. Officers and Crew of U. S. S. "Mangrove." No. 130. Officers and Enlisted Men of U. S. S. "New York," "Indiana," "Wilmington" vs. Officers and Crew of U. S. S. "Mangrove." Deposition of Charles B. Munson.

396 Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
vs.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17885.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," "Indiana," and "Wilmington," appellants,
vs.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

WASHINGTON, DISTRICT OF COLUMBIA, *ss:*

On this 14th day of February, 1902, personally appeared before me, Charles S. Hughes, a notary public in and for the aforesaid District of Columbia, and by consent of parties acting as commissioner in the aforementioned cases, Charles A. Dyson, upon call of the officers and crew of the U. S. S. "Mangrove," who first by me being duly sworn to speak the truth, the whole truth and nothing but the truth, was thereupon examined by Benjamin Micou, esq., for the officers and crew of the U. S. S. "Mangrove," and by William B. King, esq., for the officers and men of the U. S. S. "Indiana," and the U. S. S. "Wilmington." The questions and answers herein after appearing were duly taken down in shorthand by a disinterested amanuensis, Emma F. L. Smith, agreed upon by the counsel for the parties aforesaid, and by her reduced to writing; and after being so reduced, the same was read over to the said Charles A. Dyson and subscribed to by him.

397 CHARLES A. DYSON being sworn, deposes and says, being examined by Benjamin Micou, esq.:

Ques. 1. State your name, age, occupation, residence, and present duty, and interest, if any, in this claim.

A. Charles A. Dyson; age, 40 years; lieutenant, U. S. Navy, on duty in the Bureau of Steam Engineering, Navy Department; I have no interest in the claim.

Ques. 2. What line of the naval service have you been in?

A. I have been an engineer officer for the greater part of my service.

Ques. 3. Have you there the steam log book of the "Indiana?"

A. I have the steam log book of the "Indiana" for the second quarter ending June 30, 1898.

Mr. MICOU. I offer in evidence the abstract from the log of the "Indiana," which will be duly certified.

Ques. 4. From the number of turns that the "Indiana's" engines are shown to have made, can it be told from that what speed the vessel was making?

A. You could get a very close approximation to the speed she was making at the time.

Ques. 5. How do you make this approximation?

A. From the calculation, from the number of turns and the speed made at other times you take the period of time as close to the time for which you want the speed given as possible.

Ques. 6. You have stated that you have there the log book of the "Indiana?"

A. Yes.

Ques. 7. If on the 25th of April, as stated here, the starboard engine was making about 88 turns and the port engine 92 turns, what would you estimate the speed of the vessel to have been and how would you get that estimate?

A. 88 turns for the starboard engine and 92 for the port gives an average number of turns of 90 revolutions. I have taken up

398 here a run lasting for several hours on April 26th, wind on the bow, with a smooth sea, for which 8.11 revolutions per knot were required. On May 4th, the same conditions, 8.84 revolutions per knot; on May 5th 8.5; on May 6th, 8.39; on May 7th, 9.08; on May 10th, 9.05; on April 29, 8.3, giving an average for those 7 days of 8.61.

(Counsel for the "Indiana" objects to this testimony, as the source of information of the witness is not disclosed.)

The speed, using this average for 7 days, is 10.45 knots; taking the average for the nearest days, on April 26 and 29th, 8.11 and 8.3, respectively, the speed would have been 10.96 knots. Now, the average for these two days, April 26th and April 29th, is less than the mean average for the 7 days; therefore the speed is closer to the 10.96 than it is to the 10.45, and probably 10¾ knots would have been about the speed made.

Ques. 8. What is the source of information from which you get these speeds that you have estimated on in making this calculation?

A. The speeds are entered in the speed column of the log opposite each hour.

Ques. 9. What allowance, if any, is made in this calculation that you have made for the condition of the bottom of the "Indiana," that the vessel had a foul bottom?

A. The "Indiana" itself I have never served on. I served on the sister ship, the "Massachusetts" which is as nearly alike as two ships could possibly be built. With a clean bottom—that is, not freshly painted, but after she had been out of dock for three or four months—the "Massachusetts" required very close to 7.8 revolutions per knot. On the "Indiana" the mean revolutions for those 7 days has risen to 8.61 knots; its greatest rise in value has been to 9.08 knots. As the wind is only moderate in all these cases and there is a smooth sea, the chances are that this increase of revolutions is due to nothing else than a foul bottom.

Ques. 10. Where did you get the conditions which you have stated in this testimony?

399 A. They are all entered in the engineer's steam log and are copied from the deck log.

(This evidence is objected to by counsel for the "Indiana" as secondary evidence.)

Mr. MICOU. I offer in evidence these entries from the log book on these different days, showing the figures from which the estimates are made, and will have the witness attach it from the log.

Ques. 11. Does the log show the fastest speed maintained by the "Indiana" at any time during the quarter, and for how long?

A. The log shows in the synopsis in the book the greatest speed made for any two consecutive hours during the quarter. There is a column which has to be filled out each quarter.

Ques. 12. What was the greatest speed as shown that the "Indiana" made during this quarter of April 25th?

A. This is the greatest speed for two consecutive hours: 10.15 knots with an average number of revolutions of 84.65.

Ques. 13. Did you state the day?

A. This was made on May 6, 1898, midnight to 2 a. m.

Ques. 14. What is the most accurate method of ascertaining the speed of a ship, except running her over a given space the length of which is absolutely known?

A. The speed rate which is given by the patent log, which you have to depend on absolutely.

Ques. 15. These entries which you referred to, are they made in that way?

A. They are patent log entries; yes.

Cross-examination by Mr. KING:

Ques. 16. Do you know whether the bottom of the "Indiana" was foul, or otherwise, at this time?

A. I could form an idea of the condition of the bottom.

By Mr. KING. Any answer is objected to which is not based on witness' personal knowledge.

Her log book states that her last docking was August 12, 1897;

400 she had not been cleaned from that time until May 31st, 1898, when her bottom was scraped by divers at Key West.

Ques. 17. Can you give any approximation of the difference in speed of a vessel with clean bottom and one with foul bottom?

A. That is very hard to do. It depends a great deal on the degree of

foulness. The degree of foulness depends on where the vessel has been cruising and what water she has been lying in.

Ques. 18. How are the waters around the coast of Cuba, as affecting ships' bottoms?

A. I have cruised around the coast of Cuba and been there for nine months at a time, and on going north have found the bottom of the ship comparatively clean. If a ship were to lie in one of the ports where there is very little circulation of the water the chances are her bottom would foul up rapidly; but as long as she keeps in motion the chances are not very great for any great degree of fouling.

Redirect examination by Mr. MICOU:

Ques. 19. Explain fully how an estimate, such as you have made, covering several days, takes into consideration the foul condition of the ships' bottom?

A. The first thing you depend on is your patent log as your gauge of speed. You take these speeds as noted and divide the speed per hour into revolutions per hour, which will give you the revolutions required per knot speed. From my acquaintance with the sister ship, the "Massachusetts," I know positively that she only requires, with a clean bottom, 7.8 revolutions per knot. Here we find in all these cases from the "Indiana'" that she requires from 8.11 to a fraction over nine revolutions per knot where she has no unduly unfavorable conditions of
401 weather to steam against. This being so, it must be laid to a foull bottom and nothing else—this increase in revolutions.

Ques. 20. The statement in the steam log of the "Indiana," under date of April 25, 1898, made by Assistant Engineer Moody, and referring to conditions from 4 to 8 p. m., states: "While steaming at fastest speed the dynamos lifted water, necessitating shutting them down for a few minutes." Please state whether this was a thing that would have affected the speed the ship was making.

A. It was not.

C. W. DYSON,
Lieut., U. S. Navy.

Subscribed and sworn to before me this 18th day of February, 1902.

[SEAL.] CHAS. L. HUGHES,
Notary Public.

402 EXHIBIT.

Synopsis of the steam engineering log of the "Indiana," showing the weather conditions and speeds on the days referred to by the witness as the days from which he took the speeds for the ship in making his calculations:

Date.	Revs. per knot.	Wind.	Sea.
April 26	8. 11	Bow—Light ..	S.
May 4	8. 84	" Mod ...	S.
May 5	8. 50	" Mod ...	S.
May 6	8. 39	" " ...	S.
May 7	9. 08	" " ...	S.
May 10	9. 05	" " ...	S.
April 29	8. 30	Abeam—Light.	S.

NOTE.—S. stands for "smooth."

I hereby certify the above to be correct.

C. W. DYSON,
Lieut., U. S. N.

Subscribed and sworn to before me this 19th day of Feb., 1902.

[SEAL.] CHAS. L. HUGHES,
Notary Public.

403 The Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "MANGROVE." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," "Indiana," and "Wilmington," appellants.
v.
THE OFFICERS AND CREW OF THE U. S. S. "MANGROVE." } No. 17930.

Stipulation.

It is stipulated and agreed between counsel for the parties interested in the above causes that a certified copy from the steam log of the "Indiana," covering the time from 4 to 8 p. m. of April 25, 1898, may be put in evidence.

Also a certified copy of that part of the steam log of the "Indiana" which shows the greatest speed maintained by the vessel for two successive hours during the quarter from April 1st to June 30th, 1898.

HENRY M. HOYT,
Assistant Attorney-General.

WM. B. KING,
Attorney for the Officers and Enlisted Men of the U. S. S. "Indiana" and "Wilmington."

MCCAMMON & HAYDEN,
Attorneys for the Officers and Enlisted Men of the U. S. S. "New York."

HERBERT & MICOU,
Attorneys for the Officers and Crew of the U. S. S. "Mangrove."

404 *Remarks in steam log book, under date of April 25, 1898, in reference to "Indiana."*

4 to 8 p. m., as before. Running at 60 turns until 4.31, when stopped both engines. Ahead full speed 5.05, slow speed 5.48; then full speed, with orders to make 85 turns; then orders to make best speed possible. Made about 88 turns with starboard engine and 92 with port engine. Chased and captured steamer "Panama," bound in to Havana. Slowed and stopped engines at 6.45 and then worked to bells until end of watch. Good draught in fire rooms and boilers steaming very well. While steaming at fastest speed the dynamos lifted water, necessitating shutting them down for a few minutes. Continued overhauling ice machine.

R. C. MOODY,
Assistant Engineer, U. S. Navy.

I hereby certify the above to be a true copy of remarks from steam log book of U. S. S. "Indiana," under date of April 25, 1898.

C. W. DYSON,
Lieutenant, U. S. Navy.

Subscribed and sworn to before me this 19th day of February, 1902.
[SEAL.] CHAS. S. HUGHES,
Notary Public.

405 [Copy.]

Greatest speed for two or more hours during the quarter under steam alone.

U. S. S. "INDIANA."

S. engine	P. engine.	
May 6, 1898	2 hrs.	Date, and number of hours.
From mid. to 2 a. m.		Time.
10.15		Speed, in knots and tenths.
1 – 3		Direction and force of wind.
F – S		Direction and kind of sea.
84.6	84.7	Revolutions per minute.

I hereby certify the above to be a true copy of the steam log of the U. S. S. "Indiana."

C. W. DYSON,
Lieut., U. S. N.

Subscribed and sworn to before me this 18th day of Feb., 1902.
[SEAL.] CHAS. L. HUGHES,
Notary Public.

THE UNITED STATES, APPELLANT,
vs.
THE OFFICERS AND CREW OF THE U. S. S. "MANGROVE." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," "Indiana," and "Wilmington," appellants,
vs.
THE OFFICERS AND CREW OF THE U. S. S. "MANGROVE." } No. 17930.

Stipulation.

It is hereby agreed that the computation in the Hydrographic Office of the Navy Department, from the degree of latitude and the sun's declination, shows the hour of sunset at Havana, Cuba, on April 25, 1898, to have been 6.25 p. m.

HENRY M. HOYT,
Assistant Attorney-General.
WM. B. KING,
Counsel for U. S. S. "Indiana" and "Wilmington."
JAMES H. HAYDEN,
Counsel for U. S. S. "New York."
HERBERT & MICOU,
Counsel for U. S. S. "Mangrove."

(Indorsement on cover:) File No. 17865. Term No. 130. The United States, appellant, *vs.* The Officers and Crew of the U. S. Steamer "Mangrove." File No. 17930. Term No. 174. The Officers and Enlisted Men of the U. S. Ship "New York" and others, appellants, *vs.* The Officers and Crew of the U. S. Steamer "Mangrove." Stipulation of counsel and addition to record. Filed May 13th, 1902.

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407 In the Supreme Court of the United States.

THE UNITED STATES
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 24.

THE OFFICERS AND MEN OF THE U. S. S. "New York," U. S. S. "Indiana," and U. S. S. "Wilmington."
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 34.

Stipulation.

It is hereby agreed that the following depositions heretofore filed in the above cause shall be admitted and read in evidence therein, as duly taken under the order of this court authorizing further proof, entered on the 15th day of April, 1901.

Depositions of Michael Carlos, Wayne Abbott, Alex Coffee, John Geary, Howard A. Kimball, Thomas F. Burns, W. C. Blackiston, Joseph D. Lindsey, W. J. Lee, James Golden, Edward F. Maybaum, John H. Meehan, Littleton W. T. Waller.

HENRY M. HOYT,
Assistant Attorney-General.
GEORGE A. & W. B. KING,
Counsel for U. S. S. "Indiana" and U. S. S. "Wilmington."
McCAMMON & HAYDEN,
Counsel for U. S. S. "New York."
HERBERT & MICOU,
Counsel for U. S. S. "Mangrove."

408 (Indorsed:) File No., 17865 and 17930. Supreme Court U. S. October term, 1902. Term Nos., 24 and 34. The United States, appt., v. The Officers & Crew of the U. S. steamer "Mangrove" and the Officers and Crew of the U. S. ship "New York" et al. vs. The Officers & Crew of the U. S. steamer "Mangrove." Stipulation for further addition to record. Filed October 24, 1902.

409 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York" and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

Stipulation.

It is hereby stipulated and agreed that the testimony of the witness, Michael Carlos, chief boatswain's mate, U. S. N., now serving on the

U. S. S. "Oregon," who is called on behalf of the U. S. S. "Indiana," may be taken on the interrogatories and cross-interrogatories hereto attached, before any commissioned officer of the United States Navy who is not interested in this case as an officer of the "Indiana," "New York," "Wilmington," or "Mangrove" at the time of the capture of the "Panama," acting as commissioner in this cause, and it is agreed that testimony taken before him may be read in evidence the same as if taken before a commissioner duly authorized and appointed by this court.

410 It is further agreed that the Secretary of the Navy be requested to authorize the taking of this deposition in this manner.

GEORGE A. & W. B. KING,
Attorneys for Officers and Men of the U. S. S. "Indiana."

HENRY M. HOYT,
Assistant Attorney-General.

HERBERT & MICOU,
Attorneys for Officers and Men of the U. S. S. "Mangrove."

McCAMMON & HAYDEN,
Attorneys for Officers and Men of the U. S. S. "New York."

411 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York" and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

Interrogatories to be administered to Michael Carlos, a witness called on behalf of the officers and men of the U. S. S. "Indiana," now serving on the U. S. S. "Oregon."

1. State your name, age, residence, and present occupation; if in the Navy, your present rank and station.

2. On the 25th of April, 1898, what was your occupation? If you state that you were in the United States Navy, state on what vessel you were then serving and what was your rank or grade in the service.

3. If you state that you were on the U. S. S. "Indiana," state whether you were on deck about sunset.

412 4. If so, state whether you saw the Spanish steamer "Panama;" and if so, state what were the relative positions of the "Panama," the U. S. S. "Mangrove," and the U. S. S. "Indiana" when you first saw the "Panama."

5. How long did you continue on the deck of the "Indiana?"

6. Did you, between the time when you first saw the "Panama" and the time when you went below, hear any gun-fire from the U. S. S. "Mangrove?" If so, state how many you heard.

7. State whether, during the same time, you saw anything on the U. S. S. "Mangrove" indicating the firing of guns. If so, state exactly what you saw.

8. If you say that you heard or saw such gun fire, then state whether the "Mangrove" and the "Panama" approached each other about the time of such firing; and if so, whether you saw any action taken by the "Mangrove" looking toward the capture of the "Panama."

9. State whether you saw anything pass between the "Panama" and the "Mangrove" about this time; and if so, state what it was and what it did.

10. If you say that a boat passed between the two vessels, state whether you saw the boat. If so, from which vessel and to which vessel did it pass? Where was it when you saw it, and exactly what did you see? Did you use a glass, or did you see the boat with your naked eye?

11. Were you acquainted with signal flags as used in the Navy at this time? If so, state what acquaintance you have had with such
413 flags, whether by observing others using them, or whether you have had experience in reading signal flags yourself or in making signals with flags.

12. If you have testified that a boat went from the "Mangrove" to the "Panama," state whether, at that time, in your opinion, signal flags hoisted on the "Mangrove" could have been read from the "Indiana." If you answer yes, state fully why you hold such an opinion.

GEORGE A. & WM. B. KING,
Attorneys for Officers and Men of the U. S. S "Indiana."

414 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," and others, appellant,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

Cross-interrogatories to be administered to Michael Carlos, a witness called on behalf of the officers and men of the U. S. S. "Indiana," now serving on the U. S. S. "Oregon."

1. If you state that you were on the U. S. S. "Indiana" April 25, 1898, about sunset, and saw the chase of the "Panama," state what duty you were performing when you came on deck, and how long you stayed; when you first saw the Spanish steamer "Panama," when you first saw the "Mangrove," and in what direction each was going; how close the "Mangrove" came to the "Panama;" and if you state the two vessels stopped, then how long they stopped.

2. State how far you have ever heard a gun fire at sea.

3. State how far you have ever seen a boat at sea. If you state that you heard or saw any guns fired from the "Mangrove," state when you

heard or saw said guns fired; about what time; which guns they
415 were, port or starboard; and if you heard or saw more than one gun fired, which gun you heard or saw fired first.

4. If you state you saw a boat pass between the "Mangrove" and the "Panama," how large did the boat look to you, and how many people were in it? State whether you would have been positive that it was a boat if you had not afterwards learned that the "Mangrove" had captured the "Panama" and a boat passed between the two ships.

5. State whether or not you saw the "Panama" and "Mangrove," after the capture, start towards the "Indiana;" and if so, on which side of the "Panama" was the "Mangrove?" State whether or not you heard or saw the shot that the "Indiana" fired across the bow of the "Panama;" and if you did, state what was the condition of the light, and how near to the "Indiana" the "Panama" was when the shot was fired; and whether the "Panama" was coming towards the "Indiana," and whether it was so dark that if the "Panama" had passed the bow of the "Indiana" she could probably have gotten away before the "Indiana" could have stopped her.

6. State whether or not it has ever been your duty to read flag signals. If so, state what experience you have had in reading such signals. State what are the sizes of signal flags used in the Navy, and state the farthest distance you have personally ever read a flag signal, when and where you read such signal, and how and why you know the distance was as great as you state it to be.

HERBERT & MICOU,
Attorneys for the Officers and Men of the U. S. S. "Mangrove."

416 *Instructions to officers in taking testimony.*

1. This testimony may be taken by any commissioned officer of the United States Navy not present on April 25, 1898, on any of the vessels, the "Mangrove," "Indiana," "New York," or "Wilmington," which are parties to this suit.

2. In taking the deposition the officer may employ an amanuensis who is in the naval service to transcribe it, but that amanuensis must likewise not be interested in the suit.

3. Each witness, before any interrogatory is put to him, is to be sworn to tell the truth, the whole truth, and nothing but the truth, in the testimony which he is about to give.

4. No other person than the witness, the officer, and the amanuensis is to be present when the testimony is taken.

5. The questions are not to be shown to the witness, but when he appears before the officer to testify, then each question is to be read and answered before any other question is shown to him.

6. The statements of the witness in answer to the questions are to be reduced to writing as far as practicable, in the words of the witness.

7. The answer is to follow each interrogatory as written on the following sheets; if space enough is not left for the answers, they may be continued on additional sheets to be duly marked as a portion of the answers to such interrogatory and inserted among the leaves.

417 8. The officer is to sign the official certificate which appears at

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the close of the papers; he also should put his initials upon each of the other sheets of the deposition.

9. The deposition is to be signed by the witness at its close.

10. Before the witness signs the deposition, it is to be read over either to him or by him.

11. When the deposition is completed in accordance with these instructions, it is to be forwarded by mail, addressed to the clerk of the Supreme Court of the United States, Washington, D. C.

418 MICHAEL CARLOS, being duly sworn, deposes and says in answer to the interrogatories, as follows:

Interrogatory 1. State your name, age, residence, and present occupation; if in the Navy, your present rank and station.

Answer 1. Michael Carlos, forty-four years of age, chief boatswain's mate, U. S. Navy, now serving as such on board the U. S. S. "Oregon," at Puget Sound Navy-Yard.

Interrogatory 2. On the 25th of April, 1898, what was your occupation? If you state that you were in the United States Navy, state on what vessel you were then serving and what was your rank or grade in the service.

Answer 2. I was the chief boatswain's mate of the U. S. S. "Indiana."

419 Interrogatory 3. If you state that you were on the U. S. S. "Indiana," state whether you were on deck about sunset.

Answer 3. I was on deck about sunset.

Interrogatory 4. If so, state whether you saw the Spanish steamer "Panama;" and if so, state what were the relative positions of the "Panama," the U. S. S. "Mangrove," and the U. S. S. "Indiana" when you first saw the "Panama."

Answer 4. I saw the Spanish steamer "Panama;" she was broad off the port bow of the "Indiana," and abaft the "Mangrove's" starboard beam. I saw the "Panama" first and then the "Mangrove" as we drew closer.

420 Interrogatory 5. How long did you continue on the deck of the "Indiana?"

Answer 5. A couple of hours.

Interrogatory 6. Did you, between the time when you first saw the "Panama" and the time when you went below, hear any gun fire from the U. S. S. "Mangrove?" If so, state how many you heard.

Answer 6. No; I heard no gun fire from the "Mangrove."

421 Interrogatory 7. State whether, during the same time, you saw anything on the U. S. S. "Mangrove" indicating the firing of guns. If so, state exactly what you saw.

Answer 7. I saw them either working or securing a gun on the starboard side of the "Mangrove."

Interrogatory 8. If you say that you heard or saw such gun fire, then state whether the "Mangrove" and the "Panama" approached each other about the time of such firing; and if so, whether you saw any action taken by the "Mangrove" looking toward the capture of the "Panama."

Answer 8. They did not seem to be approaching each other; they

had but little headway. I saw a boat in the water about two or three boat's lengths from the "Mangrove's" side heading toward the "Panama."

422 Interrogatory 9. State whether you saw anything pass between the "Panama" and the "Mangrove" about this time. And if so, state what it was and what it did.

Answer 9. I saw the boat coming from the "Mangrove" toward the "Panama."

Interrogatory 10. If you say that a boat passed between the two vessels, state whether you saw the boat. If so, from which vessel and to which vessel did it pass? Where was it when you saw it and exactly what did you see? Did you use a glass, or did you see the boat with your naked eye?

Answer 10. I did see the boat coming from the "Mangrove" and passing toward the "Panama." I saw it a few boat's lengths from the "Mangrove's" starboard side. I saw men in the boat. I saw the boat with the naked eye.

423 Interrogatory 11. Were you acquainted with signal flags as used in the Navy at this time? If so, state what acquaintance you have had with such flags—whether by observing others using them or whether you have had experience in reading signal flags yourself or in making signals with flags.

Answer 11. Yes; my acquaintance with them being based upon observing others use them.

Interrogatory 12. If you have testified that a boat went from the "Mangrove" to the "Panama," state whether at that time, in your opinion, signal flags hoisted on the "Mangrove" could have been read from the "Indiana." If you answer yes, state fully why you hold such an opinion.

Answer 12. Yes; because I could see the men on the "Mangrove's" decks.

424 Cross-interrogatory 1. If you state that you were on the U. S. S. "Indiana" April 25, 1898, about sunset, and saw the chase of the "Panama," state what duty you were performing, when you came on deck, and how long you stayed; when you first saw the Spanish steamer "Panama," when you first saw the "Mangrove," and in what direction each was going; how close the "Mangrove" came to the "Panama," and if you state the two vessels stopped, then how long they stopped.

Answer 1. I was performing general duties on the forecastle of the U. S. S. "Indiana." I came on deck about six o'clock—about the time we sighted the "Panama"—and stayed about two or three hours. I first saw the "Panama" some time between six and seven, and saw the "Mangrove" soon after sighting the "Panama." They were both going in about the same direction. I should judge that the "Mangrove" came within two or three hundred yards of the "Panama." I should judge that they were stopped about one hour.

425 Cross-interrogatory 2. State how far you have even heard a gun fire at sea.

Answer 2. I have heard gun fire three or four miles away at sea—maybe farther. It depends upon the kind of gun fired.

Cross-interrogatory 3. State how far you have ever seen a boat at sea. If you state that you heard or saw any guns fired from the "Mangrove," state when you heard or saw said guns fired, about what time, which guns they were, port or starboard; and if you heard or saw more than one gun fired, which gun you heard or saw fired first.

Answer 3. It depends upon conditions—ordinarily, from three to four miles. I heard gun fire, but can not state it was from the "Mangrove," between six and seven o'clock. I heard more than one gun fired. The first gun I saw fired was from the port six-pounder on the "Indiana's" bridge.

426 Cross-interrogatory 4. If you state you saw a boat pass between the "Mangrove" and the "Panama," how large did the boat look to you and how many people were in it? State whether you would have been positive that it was a boat if you had not afterwards learned that the "Mangrove" had captured the "Panama" and a boat passed between the two ships.

Answer 4. It appeared to me to be a whaleboat, with from six to ten people in it. I am positive it was a boat.

427 Cross-interrogatory 5. State whether or not you saw the "Panama" and "Mangrove," after the capture, start towards the "Indiana," and if so, on which side of the "Panama" was the "Mangrove." State whether or not you heard or saw the shot that the "Indiana" fired across the bow of the "Panama," and if you did, state what was the condition of the light and how near to the "Indiana" the "Panama" was when the shot was fired, and whether the "Panama" was coming towards the "Indiana," and whether it was so dark that if the "Panama" had passed the bow of the "Indiana" she could probably have gotten away before the "Indiana" could have stopped her.

Answer 5. Yes; the "Mangrove" was on the "Panama's" port side. I saw the shot the "Indiana" fired across the bow of the "Panama;" it was nearly dusk, but light enough for me to see where the shot hit the water. The "Indiana" was about a thousand yards from the "Panama" when the shot was fired. The "Indiana" was going toward the "Panama." It was not so dark that the "Panama" could have passed the bow of the "Indiana" and gotten away before the "Indiana" could have stopped her.

428 Cross-interrogatory 6. State whether or not it has ever been your duty to read flag signals. If so, state what experience you have had in reading such signals. State what are the sizes of signal flags used in the Navy, and state the farthest distance you have personally ever read a flag signal, when and where you read such signal, and how and why you know the distance was as great as you state it to be.

Answer 6. Only at instruction or drills. I would say the regulation signal flags in the Navy are about five or six feet long. I have read them about one mile away, while in the North Atlantic Squadron in 1898. I judge this to be the distance the ships were apart.

429 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17, 865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York" and Others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17, 930.

Cross-interrogatories to be administered to Michael Carlos, a witness called on behalf of the officers and men of the U. S. S. "Indiana," now serving on the U. S. S. "Oregon."

1. If, on April 25, 1898, you were serving on board the U. S. S. "Indiana," state at what hour she went in pursuit of the Spanish steamship "Panama."

Answer 1. Between six and seven p. m.

430 2. How close was the "Indiana" to the U. S. flagship "New York" when the "Indiana" started in pursuit of the "Panama?"

Answer 2. I can not say; the "New York" was not in sight.

3. Do you remember what signals, if any, were exchanged between the "New York" and the "Indiana" at or about the beginning of the chase of the "Panama?"

Answer 3. No; I do not remember any signals.

431 4. Did you see the "New York" at or about the time when the "Panama" was boarded by a boat from the U. S. S. "Mangrove?"

Answer 4. No; I did not see the "New York."

5. If you saw her, how far distant was the "New York," in your opinion, from the "Indiana?"

Answer 5. I did not see her.

6. If you state that you saw the "New York," was she not to the westward of you and in the direction of the setting sun?

Answer 6. I did not see her.

432 7. Did not the fact that the sun was about to set when the "Panama" was boarded by a boat from the "Mangrove" make it more difficult for you to see objects to the westward, or in the direction of the sun, than to the eastward?

Answer 7. The sun did not appear to interfere; it was after the sun was down.

JAMES H. HAYDEN,
Of Counsel for the U. S. Flagship "New York."

MICHAEL CARLOS,
Chief Boatswain's Mate, U. S. Navy, U. S. S. "Oregon."

Witness:

T. A. KEARNEY,
Lieutenant, U. S. Navy.

433 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York" and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

UNITED STATES STEAMSHIP "OREGON,"
Situated at Puget Sound Navy-Yard, ss:

On the 4th day of September, in the year nineteen hundred and two, on the U. S. S. "Oregon," at the place above stated, personally came Michael Carlos, a witness, upon call of the officers and men of the U. S. S. , and after he was first duly sworn to tell the truth, the whole truth, and nothing but the truth relative to the cases pending in the Supreme Court of the United States, his statement as contained in the foregoing deposition was taken down in my presence by me, and in the presence of the witness, and said deposition was read over to and signed by the witness in my presence. No person was present when said testimony was taken except myself and the witness.

T. A. KEARNEY,
Lieutenant, U. S. Navy.

434 (Indorsed:) In the Supreme Court of the United States. The United States v. The U. S. S. "Mangrove." No. 17865. The U. S. S. "New York" and others v. The U. S. S. "Mangrove." No. 17930. Stipulation, interrogatories, cross-interrogatories, affidavit. Filed by George A. and William B. King and other attorneys.

435 (Indorsed:) File No. 17865, &c. Supreme Court U. S. October term, 1902. Term No. 24 & 34. U. S. vs. Officers & Crew of the U. S. S. "Mangrove," 24. And Officers & Enlisted Men of the U. S. S. "New York" et al. vs. Officers & Crew of U. S. S. "Mangrove," 34. Testimony of Micheal Carlos. Filed September 13, 1902.

436 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York" and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

Stipulation.

It is hereby stipulated and agreed that the testimony of the witness W. C. Blackiston, sergeant, U. S. M. C., now serving on the U. S. S. "Michigan," who is called on behalf of the U. S. S. "Indiana," may be taken on the interrogatories and cross-interrogatories hereto attached, before any commissioned officer of the United States Navy who is not interested in this case as an officer of the "Indiana," "New York," "Wilmington," or "Mangrove" at the time of the capture of the "Panama," acting as commissioner in this cause, and it is agreed that testimony taken before him may be read in evidence the same as if taken before a commissioner duly authorized and appointed by this court.

437 It is further agreed that the Secretary of the Navy be requested to authorize the taking of this deposition in this manner.

GEORGE A. & WM. B. KING,
Attorneys for Officers and Men of the U. S. S. "Indiana."

HENRY M. HOYT,
Assistant Attorney-General.

HERBERT & MICOU,
Attorneys for Officers and Men of the U. S. S. "Mangrove."

McCAMMON & HAYDEN,
Attorneys for Officers and Men of the U. S. S. "New York."

438 *Instructions to officers in taking testimony.*

1. This testimony may be taken by any commissioned officer of the United States Navy not present on April 25, 1898, on any of the vessels, the "Mangrove," "Indiana," "New York," or "Wilmington," which are parties to this suit.

2. In taking the deposition, the officer may employ an amanuensis who is in the naval service to transcribe it, but that amanuensis must likewise not be interested in the suit.

3. Each witness, before any interrogatory is put to him, is to be sworn to tell the truth, the whole truth, and nothing but the truth in the testimony which he is about to give.

4. No other person than the witness, the officer, and the amanuensis is to be present when the testimony is taken.

5. The questions are not to be shown to the witness, but when he appears before the officer to testify, then each question is to be read and answered before any other question is shown to him.

6. The statements of the witness in answer to the questions are to be reduced to writing, as far as practicable, in the words of the witness.

7. The answer is to follow each interrogatory as written on the following sheets; if space enough is not left for the answers, they may be continued on additional sheets, to be duly marked as a portion of the answers to such interrogatory and inserted among the leaves.

439 8. The officer is to sign the official certificate which appears at the close of the papers; he also should put his initials upon each of the other sheets of the deposition.

9. The deposition is to be signed by the witness at its close.

10. Before the witness signs the deposition it is to be read over either to him or by him.

11. When the deposition is completed in accordance with these instructions it is to be forwarded by mail, addressed to the clerk of the Supreme Court of the United States, Washington, D. C.

440 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York" and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

Interrogatories to be administered to W. C. Blackiston, a witness called on behalf of the officers and men of the U. S. S. "Indiana," now serving on the U. S. S. "Michigan."

W. C. BLACKISTON, being duly sworn, deposes and says, in answer to the interrogatories, as follows:

Interrogatory 1. State your name, age, residence, and present occupation; if in the Navy, your present rank and station.

Answer. William Clayton Blackiston; age, 31 years; residence, U. S. S. "Michigan," Erie, Pa.; occupation, soldier, sergeant U. S. Marine Corps.

441 Interrogatory 2. On the 25th of April, 1898, what was your occupation? If you state that you were in the United States Navy, state on what vessel you were then serving and what was your rank and grade in the service.

Answer. Occupation, soldier, private, U. S. Marine Corps, serving on board U. S. S. "Indiana."

Interrogatory 3. If you state that you were on the U. S. S. "Indiana," state whether you were on deck about sunset.

Answer. Yes; I was on deck of the U. S. S. "Indiana" about sunset.

442 Interrogatory 4. If so, state whether you saw the Spanish steamer "Panama," and if so, state what were the relative positions of the "Panama," the U. S. S. "Mangrove," and the U. S. S. "Indiana" when you first saw the "Panama."

Answer. Yes. I heard reports of guns and saw two ships ahead, which turned out to be the "Panama" and the U. S. S. "Mangrove." And they appeared to be about 400 or 500 yards apart and seven or eight miles distant from us.

Interrogatory 5. How long did you continue on the deck of the "Panama?"

Answer. I never was on the deck of the "Panama," but was on the deck of the "Indiana" until a boat was sent from the U. S. S. "Indiana" to the "Panama."

443 Interrogatory 6. Did you, between the time when you first saw the "Panama" and the time when you went below, hear any gun fire from the U. S. S. "Mangrove?" If so, state how many you heard.

Answer. I did hear gun firing, which was what called my attention to the U. S. S. "Mangrove." This was the only firing I heard.

Interrogatory 7. State whether, during the same time, you saw anything of the U. S. S. "Mangrove" indicating the firing of guns; if so, state exactly what you saw.

Answer. No.

444 Interrogatory 8. If you say that you heard or saw such gun fire, then state whether the "Mangrove" and the "Panama" approached each other about the time of such firing; and if so, whether you saw any action taken by the "Mangrove" looking toward the capture of the "Panama."

Answer. When I first heard the firing and saw the vessels, the U. S. S. "Mangrove" seemed to be approaching the "Panama."

Interrogatory 9. State whether you saw anything pass between the "Panama" and the "Mangrove" about this time; and if so, state what it was and what it did.

Answer. Yes. I saw an object pass from the U. S. S. "Mangrove" to the "Panama," which afterwards turned out to be a boat. I could not tell what it did.

445 Interrogatory 10. If you say that a boat passed between the two vessels, state whether you saw the boat. If so, from which vessel and to which vessel did it pass? Where was it when you saw it and exactly what did you see? Did you use a glass or did you see the boat with your naked eye?

Answer. Yes. I saw this object which was a boat pass from the U. S. S. "Mangrove" to the "Panama," and when I saw it first it was about halfway between the ships. I used a glass.

Interrogatory 11. Were you acquainted with signal flags as used in the Navy at this time? If so, state what acquaintance you have had with such flags, whether by observing others using them or whether you have had experience in reading signal flags yourself or in making signals with flags.

Answer. Yes. I was standing signal watch during the war; and have had experience in reading and making signals with flags.

446 Interrogatory 12. If you have testified that a boat went from the "Mangrove" to the "Panama," state whether at that time in your opinion, signal flags hoisted on the "Mangrove" could have been read from the "Indiana." If you answer yes, state fully why you hold such an opinion.

Answer. Yes. I think flag signals could be read. The reason I say this is that signals could be discerned on the Morro Castle, and colors made out, when the U. S. S. "Indiana" was said to be laying seven miles off Morro Castle at Santiago.

447 *Cross-interrogatories administered on behalf of the U. S. S. "Mangrove."*

Cross-interrogatory 1. If you state that you were on the U. S. S. "Indiana" April 25, 1898, about sunset, and saw the chase of the "Panama," state what duty you were performing when you came on deck, and how long you stayed. When you first saw the Spanish steamer "Panama," when you first saw the "Mangrove," and in what direction each was going. How close the "Mangrove" came to the "Panama," and if you state the two vessels stopped, then how long they stopped.

Answer. I was not on duty at that time. I came on deck about fifteen minutes before I saw the ships, and staid on deck until after the U. S. S. "Indiana" sent a boat to the "Panama." I saw the "Panama" and the U. S. S. "Mangrove" at the same time upon hearing the gun firing. The "Panama" seemed to be coming toward the U. S. S. "Indiana" and the U. S. S. "Mangrove" toward the "Panama." As near as I can tell the U. S. S. "Mangrove" came to within about 400 yards of the "Panama." The U. S. S. "Mangrove" I think had stopped, but do not know how long she stopped. I can not tell about the "Panama."

448 Cross-interrogatory 2. State how far you have ever heard a gun fire at sea.

Answer. I have heard gun fire at sea about ten mile distant, when the "Christobal Colon" was being chased by our ships on July 3, 1898.

Cross-interrogatory 3. State how far you have ever seen a boat at sea. If you state that you heard or saw any guns fired from the "Mangrove," state when you heard or saw said guns fired, about what time, which guns they were, port or starboard, and if you heard or saw more than one gun fired, which gun you heard or saw fired first.

Answer. I have seen boats at sea about eight miles distant while on a ship during target practice. I heard gun fire at about 6.00 p. m. on April 25, 1898. I do not know what guns they were as I did not see them fired, and I only remember hearing one gun fire.

449 Cross-interrogatory 4. If you state you saw a boat in the water, then state when you saw it, and what ship it was going to, how large it looked to you, and how many people were in it, and what was the color of the boat?

Answer. I saw an object in the water which I took to be a boat going from the U. S. S. "Mangrove" to the "Panama" at about fifteen minutes after I heard the gun fire. The boat looked very small and I could not tell how many people were in it or the color of the boat.

450 Cross-interrogatory 5. State whether or not you heard or saw the shot that the "Indiana" fired across the bow of the "Panama;" and if you did, state how near the "Indiana" was to the "Panama" when the shot was fired, and whether the "Panama" was coming toward the "Indiana," and whether it was so dark that if the "Panama" had passed the bow of the "Indiana" she could probably have gotten away before the "Indiana" could have stopped her. State whether it was after or before the shot was fired from the "Indiana" that you saw the boat in the water.

Answer. Yes; I heard the shot that the U. S. S. "Indiana" fired across the bow of the "Panama." The U. S. S. "Indiana" was about 1,000 yards from the "Panama" when the shot was fired. The "Panama" was coming toward the U. S. S. "Indiana" and it was not dark at the time. I saw the boat in the water before the shot was fired from the U. S. S. "Indiana."

451 Cross-interrogatory 6. State whether or not it has ever been your duty to read flag signals; if so, state what experience you have had in reading such signals. State what are the sizes of signal flags used in the Navy, and state the farthest distance you have personally ever read a flag signal; when and where you read such signal, and how and why you know the distance was as great as you state it to be.

Answer. It has been my duty to read flag signals; I stood signal watch during the Spanish-American war. There are different sizes of signal flags. I have read signals at a distance of about seven miles during squadron evolutions, judging from what the quartermaster and officer of the deck told me at the time.

452 Cross-interrogatory 7. Did you see the signals made by the "Mangrove" when she captured the "Panama?"

Answer. I don't remember seeing the signals on the U. S. S. "Mangrove."

453 *Cross-interrogatories to be administered on behalf of the U. S. S. "New York" to W. C. Blackiston, a witness called on behalf of the officers and men of the U. S. S. "Indiana," now serving on the U. S. S. "Michigan."*

1. If on April 25, 1898, you were serving on board the U. S. S. "Indiana," state at what hour she went in pursuit of the Spanish steamship "Panama."

Answer. Yes; I was serving on board the U. S. S. "Indiana" on April 25, 1898, and the U. S. S. "Indiana" went in pursuit of the "Panama" on that date, at about 6.00 p. m.

2. How close was the "Indiana" to the U. S. flagship "New York" when the "Indiana" started in pursuit of the "Panama?"

Answer. I do not know.

454 3. Do you remember what signals, if any, were exchanged between the "New York" and the "Indiana" at or about the beginning of the chase of the "Panama?"

Answer. None to my knowledge.

4. Did you see the "New York" at or about the time when the "Panama" was boarded by a boat from the U. S. S. "Mangrove"?

Answer. I did not.

455 5. If you saw her, how far distant was the "New York," in your opinion, from the "Indiana?"

Answer. I do not know.

6. If you state that you saw the "New York," was she not to the westward of you and in the direction of the setting sun?

Answer. I do not know.

456 7. Did not the fact that the sun was about to set when the "Panama" was boarded by a boat from the "Mangrove" make it more difficult for you to see objects to the westward or in the direction of the sun than to the eastward?

Answer. I do not remember the position of the ships in regard to the sun at that time.

I having read the foregoing questions and answers pronounce them to be correct.

W. C. BLACKISTON,
Sergeant, U. S. Marine Corps.

457 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "MANGROVE." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "MANGROVE." } No. 17930.

UNITED STATES STEAMSHIP "MICHIGAN,"
Situated at Erie, Pennsylvania, ss:

On the twelfth day of Sept., in the year nineteen hundred and two, on the U. S. S. "Michigan," at the place above stated, personally came W. C. Blackiston, a witness, upon call of the officers and men of the U. S. S. "Indiana," and after he was first duly sworn to tell the truth, the whole truth, and nothing but the truth relative to the cases pending in the Supreme Court of the United States, his statement as contained in the foregoing deposition was taken down in my presence by George R. Downs, chief yeoman, U. S. N., a disinterested amanuensis, and in the presence of the witness, and said deposition was read over to and signed by the witness in my presence. No person was present when said testimony was taken except myself and the witness and the amanuensis aforesaid.

R. T. ORVIS,
Passed Assistant Surgeon, U. S. Navy.

458 (Indorsed:) File No., 17865, &c. Supreme Court U. S., October term, 1902. Term No., 24 and 34. U. S., applt., vs. Officers & Crew of U. S. S. "Mangrove." Officers & Enlisted Men of U. S. S. "New York" et al., appts., vs. Officers and Crew of U. S. S. "Mangrove." Testimony of W. C. Blackiston. Filed Sept. 15, 1902.

459 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York" and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

Stipulation.

It is hereby stipulated and agreed that the testimony of the witness, Wayne Abbott, bugler, U. S. N., now serving on the U. S. S. "Dolphin," who is called on behalf of the U. S. S. "Indiana," may be taken on the interrogatories and cross-interrogatories hereto attached, before any commissioned officer of the United States Navy who is not interested in this case as an officer of the "Indiana," "New York," "Wilmington," or "Mangrove" at the time of the capture of the "Panama," acting as commissioner in this cause, and it is agreed that testimony taken before him may be read in evidence the same as if taken before a commissioner duly authorized and appointed by this court.

460 It is further agreed that the Secretary of the Navy be requested to authorize the taking of this deposition in this manner.

GEORGE A. & WM. B. KING,
Attorneys for Officers and Men of the U. S. S. "Indiana."

HENRY M. HOYT,
Assistant Attorney-General.

HERBERT & MICOU,
Attorneys for Officers and Men of the U. S. S. "Mangrove."

McCAMMON & HAYDEN,
Attorneys for Officers and Men of the U. S. S. "New York."

461 *Instructions to officer taking testimony.*

1. This testimony may be taken by any commissioned officer of the United States Navy, not present of April 25, 1898, on any of the vessels, the "Mangrove," "Indiana," "New York," or "Wilmington," which are parties to this suit.

2. In taking the deposition, the officer may employ an amanuensis who is in the naval service to transcribe it, but that amanuenses must likewise not be interested in the suit.

3. Each witness, before any interrogatory is put to him is to be sworn to tell the truth, the whole truth, and nothing but the truth, in the testimony which he is about to give.

4. No other person than the witness, the officer, and the amanuensis is to be present when the testimony is taken.

5. The questions are not to be shown to the witness, but when he appears before the officer to testify, then each question is to be read and answered before any other question is shown to him.

6. The statements of the witness in answer to the questions are to b reduced to writing as far as practicable, in the words of the witness.

7. The answer is to follow each interrogatory as written on the following sheets; if space enough is not left for the answers, they may be continued on additional sheets to be duly marked as a portion of the answers to such interrogatory and inserted among the leaves.

462 8. The officer is to sign the official certificate which appears at the close of the papers; he also should put his initials upon each of the other sheets of the deposition.

9. The deposition is to be signed by the witness at its close.

10. Before the witness signs the deposition, it is to be read over, either to him or by him.

11. When the deposition is completed in accordance with these instructions, it is to be forwarded by mail, addressed to the clerk of the Supreme Court of the United States, Washington, D. C.

463 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York" and others, appellants.
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

Interrogatories to be administered to Wayne Abbott, a witness called on behalf of the officers and men of the U. S. S. "Indiana," now serving on the U. S. S. "Dolphin."

WAYNE ABBOTT, being duly sworn, deposes and says in answer to the interrogatories as follows:

Interrogatory 1. State your name, age, residence, and present occupation; if in the Navy, your present rank and station.

A. Wayne Abbott; thirty years and nine months; Ipswich, Massachusetts; bugler, U. S. Navy, attached to and serving on board the U. S. S. "Dolphin."

464 Interrogatory 2. On the 25th of April, 1898, what was your occupation? If you state that you were in the United States Navy, state on what vessel you were then serving and what was your rank and grade in the service.

A. Bugler; attached to and serving on board the U. S. S. "Indiana."

Interrogatory 3. If you state that you were on the U. S. S. "Indiana," state whether you were on deck about sunset.

A. I was on deck about sunset.

465 Interrogatory 4. If so, state whether you saw the Spanish steamer "Panama," and if so, state what were the relative positions of the "Panama," the U. S. S. "Mangrove," and the U. S. S. "Indiana" when you first saw the "Panama."

A. I did see the steamer "Panama." The "Mangrove" and the "Panama" were on the horizon, just in sight, the "Mangrove" to the left and the "Panama" to the right. They bore a little west and north of the "Indiana," as near as I can judge.

Interrogatory 5. How long did you continue on the deck of the "Panama?"

A. I take it for granted that the "Indiana" is meant for the "Panama." I continued on the deck of the "Indiana" probably for two or three hours.

466 Interrogatory 6. Did you, between the time when you first saw the "Panama" and the time when you went below, hear any gun fire from the U. S. S. "Mangrove?" If so, state how many you heard.

A. I did not hear any gun fire. I saw the smoke of one gun; I don't remember of any more.

Interrogatory 7. State whether during the same time you saw anything of the U. S. S. "Mangrove" indicating the firing of guns. If so, state exactly what you saw.

A. I saw the smoke of the gun on the "Mangrove."

467 Interrogatory 8. If you say that you heard or saw such gun fire, then state whether the "Mangrove" and the "Panama" approached each other about the time of such firing; and if so, whether you saw any action taken by the "Mangrove" looking toward the capture of the "Panama."

A. I saw the "Mangrove" approaching the "Panama," and they may have become stationary; perhaps the "Mangrove" under slow headway, then the smoke of the gun.

Interrogatory 9. State whether you saw anything pass between the "Panama" and the "Mangrove" about this time; and if so, state what it was and what it did.

A. I distinguished a boat afloat between the two.

468 Interrogatory 10. If you say that a boat passed between the two vessels, state whether you saw the boat. If so, from which vessel, and to which vessel did it pass? Where was it when you saw it, and exactly what did you see? Did you use a glass or did you see the boat with your naked eye?

A. I distinguished a boat with the naked eye; a man-of-war boat, which I suppose belonged to the "Mangrove."

Interrogatory 11. Were you acquainted with signal flags as used in the Navy at this time? If so, state what acquaintance you have had with such flags, whether by observing others using them or whether you have had experience in reading signal flags yourself or in making signals with flags.

A. I had experience in reading flags by signals as taught man-of-war's men usually. I have had no particular experience in making signals, not having been either quartermaster or signal boy.

469 Interrogatory 12. If you have testified that a boat went from the "Mangrove" to the "Panama," state whether at that time, in your opinion, signal flags hoisted on the "Mangrove" could have been read from the "Indiana." If you answer yes, state fully why you hold such an opinion.

A. I don't remember seeing any signals made then. I believe flags might have been distinguished.

470 *Cross-interrogatories administered on behalf of the U. S. S. "Mangrove."*

Cross-interrogatory 1. If you state that you were on the U. S. S. "Indiana" April 25, 1898, about sunset, and saw the chase of the "Panama," state what duty you were performing; when you came on deck, and how long you stayed; when you first saw the Spanish steamer "Panama," when you first saw the "Mangrove," and in what direction each was going; how close the "Mangrove" came to the "Panama," and if you state the two vessels stopped, then how long they stopped.

A. I was at my station as bugler, and staid on deck for two or three hours. The "Panama" was headed towards us, and the "Mangrove" had changed her direction to the eastward, heading towards the "Panama." They were apparently within 1,000 yards, and only remained stationary a few minutes, if they remained stationary.

471 Cross-interrogatory 2. State how far you have ever heard a gun fire at sea.

A. I have heard gun fire at a distance of nine miles.

Cross-interrogatory 3. State how far you have ever seen a boat at sea. If you state that you heard or saw any guns fired from the "Mangrove," state when you heard or saw said guns fired, about what time, which guns they were—port or starboard, and if you heard or saw more than one gun fired, which gun you heard or saw fired first.

A. Perhaps ten miles. I saw the smoke of one gun, apparently from the starboard side of the "Mangrove." I should judge that it was about 6.30.

472 Cross-interrogatory 4. If you state you saw a boat in the water, then state when you saw it, and what ship it was going to, how large it looked to you, and how many people were in it, and what was the color of the boat.

A. I saw a boat in the water apparently a man-of-war boat with a regular crew. I could not swear that it went from the "Mangrove" to the "Panama," but supposed that it did. I saw it a short time after the gun was fired. It was hard to judge the color of it, apparently a slate color.

473 Cross-interrogatory 5. State whether or not you heard or saw the shot that the "Indiana" fired across the bow of the "Panama," and if you did, state how near the "Indiana" was to the "Panama" when the shot was fired; and whether the "Panama" was coming towards the "Indiana," and whether it was so dark that if the "Panama" had passed the bow of the "Indiana" she could probably have gotten away before the "Indiana" could have stopped her. State whether it was after or before the shot was fired from the "Indiana" that you saw the boat in the water.

A. I saw and heard the shot that the "Indiana" fired across the bow of the "Panama." The "Panama" was probably a half mile away and coming towards us. It was not dark, and the "Panama" was plainly visible, and would never have gotten away anyhow. Long before.

474 Cross-interrogatory 6. State whether or not it has ever been your duty to read flag signals. If so, state what experience you have had in reading such signals. State what are the sizes of signal

flags used in the Navy, and state the farthest distance you have personally ever read a flag signal, when and where you read such signal, and how and why you know the distance was as great as you state it to be.

A. It never has been my duty to read flag signals. I am unable to give the size of No. 1 signal flags. I don't wish to make any statement in regard to reading signals at a distance.

475 Cross-interrogatory 7. Did you see the signals made by the "Mangrove" when she captured the "Panama?"

A. I saw no signals made by the "Mangrove."

476 *Cross-interrogatories to be administered on behalf of the U. S. S. "New York" to Wayne Abbott, a witness called on behalf of the officers and men of the U. S. S. "Indiana," now serving on the U. S. S.*

1. If, on April 25, 1898, you were serving on board the U. S. S. "Indiana," state at what hour she went in pursuit of the Spanish steamship "Panama."

A. Shortly after six o'clock in the evening.

2. How close was the "Indiana" to the U. S. flagship "New York" when the "Indiana" started in pursuit of the "Panama?"

A. Probably at a distance of seven or eight miles.

477 3. Do you remember what signals, if any, were exchanged between the "New York" and the "Indiana" at or about the beginning of the chase of the "Panama?"

A. I don't remember any signals made at that time.

4. Did you see the "New York" at or about the time when the "Panama" was boarded by a boat from the U. S. S. "Mangrove?"

A. I don't remember particularly of seeing the "New York" at that time, but the blockading fleet at Havana was in sight.

478 5. If you saw her, how far distant was the "New York," in your opinion, from the "Indiana?"

A. The blockading fleet was probably seven or eight miles away.

6. If you state that you saw the "New York," was she not to the westward of you and in the direction of the setting sun?

A. She was not to the westward but to the eastward of us.

479 7. Did not the fact that the sun was about to set when the "Panama" was boarded by a boat from the "Mangrove" make it more difficult for you to see objects to the westward or in the direction of the sun than to the eastward?

A. The setting sun made no particular difference in that respect, because the "Panama" and the "Mangrove" were to the northward and the blockading fleet to the eastward of us.

WAYNE ABBOTT,
Bugler, U. S. Navy.

480 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York" and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

UNITED STATES STEAMSHIP "DOLPHIN,"
Situated at *ss:*

On the 13th day of September, in the year nineteen hundred and two, on the U. S. S. "Dolphin," at the place above stated, personally came Wayne Abbott, a witness upon call of the officers and men of the U. S. S. "Indiana," and after he was first duly sworn to tell the truth, the whole truth, and nothing but the truth, relative to the cases pending in the Supreme Court of the United States, his statement as contained in the foregoing deposition was taken down in my presence by A. Heuerman, a disinterested amanuenses, and in the presence of the witness, and said deposition was read over to and signed by the witness in my presence. No person was present when said testimony was taken except myself and the witness and the amanuensis aforesaid.

ARTHUR H. CATHCART,
Assistant Paymaster, U. S. Navy.

481 (Indorsed:) File No. 17865, &c. Supreme Court U. S. October term, 1902. Term No. 24 & 34. United States, appt., *vs.* Officers & Crew of U. S. S. "Mangrove," & Officers & Enlisted Men of U. S. S. "New York" et al., appts., *vs.* Officers & Crew of the U. S. steamer "Mangrove." Testimony of Wayne Abbott. Filed Sept. 16th, 1902.

482 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

Stipulation.

It is hereby stipulated and agreed that the testimony of the witness, Joseph D. Lindsay, gunner's mate, U. S. N., now serving on the

U. S. T. B. "Biddle," who is called on behalf of the U. S. S. "Indiana," may be taken on the interrogatories and cross-interrogatories hereto attached, before any commissioned officer of the United States Navy who is not interested in this case as an officer of the "Indiana," "New York," "Wilmington," or "Mangrove" at the time of the capture of the "Panama," acting as commissioner in this cause, and it is agreed that testimony taken before him may be read in evidence the same as if taken before a commissioner duly authorized and appointed by this court.

483 It is further agreed that the Secretary of the Navy be requested to authorize the taking of this deposition in this manner.

GEORGE A. & WM. B. KING,
Attorneys for Officers and Men of the U. S. S. "Indiana."

HENRY M. HOYT,
Assistant Attorney-General.

HUBERT & MICON,
Attorneys for Officers and Men of the U. S. S. "Mangrove."

MCCAMMON & HAYDEN,
Attorneys for Officers and Men of the U. S. S. "New York."

484 *Instructions to officers in taking testimony.*

1. This testimony may be taken by any commissioned officer of the United States Navy, not present on April 25, 1898, on any of the vessels, the "Mangrove," "Indiana," "New York," or "Wilmington," which are parties to this suit.

2. In taking the deposition the officer may employ an amanuensis who is in the naval service, to transcribe it, but that amanuensis must likewise not be interested in the suit.

3. Each witness, before any interrogatory is put to him, is to be sworn to tell the truth, the whole truth, and nothing but the truth, in the testimony which he is about to give.

4. No other person than the witness, the officer, and the amanuensis is to be present when the testimony is taken.

5. The questions are not to be shown to the witness, but when he appears before the officer to testify, then each question is to be read and answered before any other question is shown to him.

6. The statements of the witness in answer to the questions are to be reduced to writing, as far as practicable, in the words of the witness.

7. The answer is to follow each interrogatory as written on the following sheets; if space enough is not left for the answers, they may be continued on additional sheets, to be duly marked as a portion of the answers to such interrogatory, and inserted among the leaves.

485 8. The officer is to sign the official certificate which appears at the close of the papers; he also should put his initials upon each of the other sheets of the deposition.

9. The deposition is to be signed by the witness at its close.

10. Before the witness signs the deposition, it is to be read over either to him or by him.

11. When the deposition is completed in accordance with these instructions, it is to be forwarded by mail, addressed to the clerk of the Supreme Court of the United States, Washington, D. C.

486 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

Interrogatories to be administered to Joseph D. Lindsay, a witness called on behalf of the officers and men of the U. S. S. "Indiana," now serving on the U. S. T. B. "Biddle."

JOSEPH D. LINDSAY, being duly sworn, deposes and says in answer to the interrogatories, as follows:

Interrogatory 1. State your name, age, residence, and present occupation; if in the Navy, your present rank and station.

(Having taken the oath, I wish to state that I have already answered certain questions or interrogatories, at which time I had a private log to which I referred.)

A. My name is Joseph D. Lindsay; I will be 24 years of age the 25th of November; my residence is Philadelphia; I am a gunner's mate, second class, serving on board the U. S. S. "Eagle."

487 Interrogatory 2. On the 25th of April, 1898, what was your occupation? If you state that you were in the United States Navy, state on what vessel you were then serving, and what was your rank and grade in the service.

A. I was an apprentice, first class, in the U. S. Navy, serving on the battle ship "Indiana."

Interrogatory 3. If you state that you were on the U. S. S. "Indiana," state whether you were on deck about sunset.

A. I was on the bridge.

488 Interrogatory 4. If so, state whether you saw the Spanish steamer "Panama;" and if so, state what were the relative positions of the "Panama," the U. S. S. "Mangrove," and the U. S. S. "Indiana" when you first saw the "Panama."

A. The "Indiana" was going about nor'-nor'east from Havana to Key West. The "Mangrove" was bearing off our starboard bow, about eight miles away. The "Panama" was off the "Mangrove's" starboard bow, bearing down for the "Mangrove." The "Mangrove" was going about nor'-nor'west and the "Panama" was coming for "Mangrove."

(The word "west" was crossed out and "east" substituted therefor; also the word "down" crossed out, and also the word "us" changed to "Mangrove." This by the witness, when answer was read over to him. Geo. F. F. Wilde, Captain, U. S. N.)

Interrogatory 5. How long did you continue on the deck of the "Panama?"

A. I was not on the "Panama." I was on the "Indiana." About 5 hours on her deck.

489 Interrogatory 6. Did you, between the time when you first saw the "Panama" and the time when you went below, hear any gun fire from the U. S. S. "Mangrove?" If so, state how many you heard.

A. We saw the smoke and then heard the gun fired. I heard the gun fired. I can't say how many shots I heard. I am certain there were two.

Interrogatory 7. State whether, during the same time, you saw anything of the U. S. S. "Mangrove" indicating the firing of guns. If so, state exactly what you saw.

A. I saw smoke and heard the report of the gun.

490 Interrogatory 8. If you say that you heard or saw such gun fire, then state whether the "Mangrove" and the "Panama" approached each other about the time of such firing; and if so, whether you saw any action taken by the "Mangrove" looking toward the capture of the "Panama."

A. They were heading for each other. The "Mangrove" lowered a boat and fired guns.

Interrogatory 9. State whether you saw anything pass between the "Panama" and the "Mangrove" about this time; and if so, state what it was and what it did.

A. A boat was lowered from the starboard side of the "Mangrove" and started toward the "Panama."

491 Interrogatory 10. If you say that a boat passed between the two vessels, state whether you saw the boat. If so, from which vessel and to which vessel did it pass? Where was it when you saw it, and exactly what did you see? Did you use a glass or did you see the boat with your naked eye?

A. I saw the boat. It passed from the "Mangrove" to the "Panama" and passed under her stern. I saw it with the naked eye.

Interrogatory 11. Were you acquainted with signal flags as used in the Navy at this time? If so, state what acquaintance you have had with such flags, whether by observing others using them or whether you have had experience in reading signal flags yourself or in making signals with flags.

A. I was acquainted with signal flags. I have had five months' experience making signals and using flags.

492 Interrogatory 12. If you have testified that a boat went from the "Mangrove" to the "Panama," state whether at that time, in your opinion, signal flags hoisted on the "Mangrove" could have been read from the "Indiana." If you answer yes, state fully why you hold such an opinion.

A. They could have been read with a glass. It was light enough to see them.

493 *Cross-interrogatories administered on behalf of the U. S. S. "Mangrove."*

Cross-interrogatory 1. If you state that you were on the U. S. S. "Indiana" April 25, 1898, about sunset, and saw the chase of the

"Panama," state what duty you were performing, when you came on deck, and how long you stayed. When you first saw the Spanish steamer "Panama," when you first saw the "Mangrove," and in what direction each was going. How close the "Mangrove" came to the "Panama;" and if you state the two vessels stopped, then how long they stopped.,

A. I was on lookout from four to six o'clock. I first saw the Spanish steamer "Panama" about 5.45 p. m.; perhaps it was 5.30. The "Mangrove" was on our starboard side all the time. When I first saw the "Panama" she was going down the coast about southwest. She was going toward Havana. The "Mangrove" was going same direction as the "Indiana." She went to within about 400 yards of the "Panama." They stopped about 15 or 20 minutes.

494 Cross-interrogatory 2. State how far you have ever heard a gun fire at sea.

A. I have heard a gun fired 30 miles. It depends much on the wind and weather and on the size of the gun.

Cross-interrogatory 3. State how far you have ever seen a boat at sea. If you state that you heard or saw any guns fired from the "Mangrove," state when you heard or saw said guns fired, about what time, which guns they were, port or starboard, and if you heard or saw more than one gun fired, which gun you heard or saw fired first.

A. I have seen a small cutter from the lookout a distance of 8 or nine miles on a clear day. I have seen steam launches from the fighting top a distance of 7 miles. I heard the guns fired from the "Mangrove" a little before six o'clock. I can't say whether they were port or starboard guns. I heard two guns; I can't tell which was first.

495 Cross-interrogatory 4. If you state you saw a boat in the water, then state when you saw it, and what ship it was going to, how large it looked to you, and how many people were in it, and what was the color of the boat.

A. I saw a boat in the water about 6 o'clock. It was going toward the "Panama." It was about the size of a dinkey. I can't say exactly how many people were in it. There were about 6 people. I did not notice its color.

496 Cross-interrogatory 5. State whether or not you heard or saw the shot that the "Indiana" fired across the bow of the "Panama," and if you did, state how near the "Indiana" was to the "Panama" when the shot was fired, and whether the "Panama" was coming towards the "Indiana," and whether it was so dark that if the "Panama" had passed the bow of the "Indiana" she could probably have gotten away before the "Indiana" could have stopped her. State whether it was after or before the shot was fired from the "Indiana" that you saw the boat in the water.

A. I heard the shot the "Indiana" fired across the bow of the "Panama." I was one of the gun's crew. The "Indiana" was about 500 yards from the "Panama." The "Panama" was coming toward the "Indiana" off the port bow. The men on the "Panama" were plainly to be seen. The "Panama" could not have got away from the "Indiana" on account of the darkness. I saw the boat in the water before the shot was fired.

497 Cross-interrogatory 6. State whether or not it has ever been your duty to read flag signals. If so, state what experience you

have had in reading such signals. State what are the sizes of signal flags used in the Navy, and state the farthest distance you have personally ever read a flag signal, when and where you read such signal, and how and why you know the distance was as great as you state it to be.

A. It has been my duty. I have been a signal boy on the bridge. The sizes are about 7 foot hoist and nine foot fly. On a clear day I have read signals at a distance of a mile. I could tell it was so far because the ships were in file—in line ahead.

498 Cross-interrogatory 7. Did you see the signals made by the "Mangrove" when she captured the "Panama?"

A. I saw the flags, but did not read the signals.

499 *Cross-interrogatories to be administered on behalf of the U. S. S. "New York" to Joseph D. Lindsay, a witness called on behalf of the officers and men of the U. S. S. "Indiana" now serving on the U. S. T. B. "Biddle."*

1. If on April 25, 1898, you were serving on board the U. S. S. "Indiana," state at what hour she went in pursuit of the Spanish steamship "Panama."

A. It was a little after five o'clock.

2. How close was the "Indiana" to the U. S. flagship "New York" when the "Indiana" started in pursuit of the "Panama?"

A. We left the "New York" at Havana. Having lost my notes, I can not say the exact distance. I should say we were about 1 and ½ hours' steaming from the "New York." That would be about 20 miles.

500 3. Do you remember what signals, if any, were exchanged between the "New York" and the "Indiana" at or about the beginning of the chase of the "Panama?"

A. There were none to my knowledge.

4. Did you see the "New York" at or about the time when the "Panama" was boarded by a boat from the U. S. S. "Mangrove?"

A. No, sir.

501 5. If you saw her, how far distant was the "New York," in your opinion, from the "Indiana?"

6. If you state that you saw the "New York," was she not to the westward of you and in the direction of the setting sun?

A. When we left the "New York" she was on our port quarter.

502 7. Did not the fact that the sun was about to set when the "Panama" was boarded by a boat from the "Mangrove" make it more difficult for you to see objects to the westward or in the direction of the sun than to the eastward?

A. No, sir.

JOSEPH DANA LINDSAY.

503 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York" and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

UNITED STATES TORPEDO BOAT BIDDLE,
Situated at , ss:

On the 24th day of September, in the year nineteen hundred and two, U. S. navy-yard, Portsmouth, N. H., at the place above stated, personally came Joseph D. Lindsay, a witness, upon call of the officers and men of the U. S. S. "Indiana," and after he was first duly sworn to tell the truth, the whole truth, and nothing but the truth relative to the cases pending in the Supreme Court of the United States, his statement as contained in the foregoing deposition was taken down in my presence by me or by Glenn H. Frost, a disinterested amanuensis, and in the presence of the witness, and said deposition was read over to and signed by the witness in my presence. No person was present when said testimony was taken except myself and the witness and the amanuensis aforesaid.

GEO. F. F. WILDE,
Captain, U. S. Navy.

504 (Indorsed:) File No. 17865, &c. Supreme Court U. S. October term, 1902. Term Nos. 24 & 34. United States, appl., vs. Officers & Crew of U. S. S. "Mangrove," and Officers & Enlisted Men of U. S. S. "New York" et al., appls., vs. Officers & Crew of U. S. S. "Mangrove." Testimony of Joseph Duna Lindsay. Filed Sept. 27, 1902.

505 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

Stipulation.

It is hereby stipulated and agreed that the testimony of the witness, Alex. Coffee, gunner's mate, U. S. N., now serving on the U. S. S.

"Cincinnati," who is called on behalf of the U. S. S. "Indiana," may be taken on the interrogatories and cross-interrogatories hereto attached, before any commissioned officer of the United States Navy who is not interested in this case as an officer of the "Indiana," "New York," "Wilmington," or "Mangrove" at the time of the capture of the "Panama," acting as commissioner in this cause, and it is agreed that testimony taken before him may be read in evidence the same as if taken before a commissioner duly authorized and appointed by this court.

506 It is further agreed that the Secretary of the Navy be requested to authorize the taking of this deposition in this manner.

GEORGE A. & WM. B. KING,
Attorneys for officers and men of the U. S. S. "Indiana."

HENRY M. HOYT,
Assistant Attorney General.

HERBERT & MICOU,
Attorneys for officers and men of the U. S. S. "Mangrove."

MCCAMMON & HAYDEN,
Attorneys for officers and men of the U. S. S. "New York."

507 *Instructions to officers in taking testimony.*

1. This testimony may be taken by any commissioned officer of the United States Navy not present on April 25, 1898, on any of the vessels, the "Mangrove," "Indiana," "New York," or "Wilmington," which are parties to this suit.

2. In taking the deposition, the officer may employ an amanuensis who is in the naval service to transcribe it, but that amanuensis must likewise not be interested in the suit.

3. Each witness, before any interrogatory is put to him, is to be sworn to tell the truth, the whole truth, and nothing but the truth in the testimony which he is about to give.

4. No other person than the witness, the officer, and the amanuensis is to be present when the testimony is taken.

5. The questions are not to be shown to the witness, but when he appears before the officer to testify, then each question is to be read and answered before any other question is shown to him.

6. The statements of the witness in answer to the questions are to be reduced to writing, as far as practicable, in the words of the witness.

7. The answer is to follow each interrogatory as written on the following sheets; if space enough is not left for the answers, they may be continued on additional sheets to be duly marked as a portion of the answers to such interrogatory and inserted among the leaves.

508 8. The officer is to sign the official certificate which appears at the close of the papers; he also should put his initials upon each of the other sheets of the deposition.

9. The deposition is to be signed by the witness at its close.

10. Before the witness signs the deposition, it is to be read over either to him or by him.

11. When the deposition is completed in accordance with these instructions, it is to be forwarded by mail, addressed to the clerk of the Supreme Court of the United States, Washington, D. C.

509 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN, OF THE U. S. S. "New York," and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

Interrogatories to be administered to Alex. Coffee, a witness called on behalf of the officers and men of the U. S. S. "Indiana," now serving on the U. S. S. "Cincinnati."

ALEX. COFFEE, being duly sworn, deposes and says in answer to the interrogatories, as follows:

Interrogatory 1. State your name, age, residence, and present occupation; if in the Navy, your present rank and station.

Interrogatory 1. Answer. Alex. Coffee; fifty years; New York City; mariner; gunner's mate, third class, U. S. Navy, serving on board the U. S. S. "Cincinnati," at Colon, United States of Colombia.

510 Interrogatory 2. On the 25th of April, 1898, what was your occupation? If you state that you were in the United States Navy, state on what vessel you were then serving, and what was your rank and grade in the service.

Interrogatory 2. Answer. I was third-class gunner's mate on the U. S. S. "Indiana."

Interrogatory 3. If you state that you were on the U. S. S. "Indiana," state whether you were on deck about sunset.

Interrogatory 3. Answer. I was on deck about sunset.

511 Interrogatory 4. If so, state whether you saw the Spanish steamer "Panama," and if so, state what were the relative positions of the "Panama," the U. S. S. "Mangrove," and the U. S. S. "Indiana" when you first saw the "Panama."

Interrogatory 4. Answer. I saw the Spanish steamer "Panama." The "Mangrove" was closest to the "Panama," and the "Indiana" laid outside when I first saw the "Panama."

Interrogatory 5. How long did you continue on the deck of the "Panama?"

Interrogatory 5. Answer. I never was on the deck of the "Panama," but I was on the deck of the "Indiana" about two and one-half hours.

512 Interrogatory 6. Did you, between the time when you first saw the "Panama" and the time when you went below, hear any gun fire from the U. S. S. "Mangrove?" If so, state how many you heard.

Interrogatory 6. Answer. I heard one gun fired from the U. S. S. "Mangrove," across the bow of the "Panama."

Interrogatory 7. State whether, during the same time, you saw anything of the U. S. S. "Mangrove" indicating the firing of guns. If so, state exactly what you saw.

Interrogatory 7. Answer. I was on the forecastle forward, of the "Indiana," and heard one gun fired from the "Mangrove." The "Panama" then hove to; then the "Indiana" came up and sent a boat's crew on board the "Panama."

513 Interrogatory 8. If you say that you heard or saw such gun fire, then state whether the "Mangrove" and the "Panama" approached each other about the time of such firing; and if so, whether you saw any action taken by the "Mangrove" looking toward the capture of the "Panama."

Interrogatory 8. Answer. The "Mangrove" went close to the "Panama" and the "Panama" stopped. I did not see the "Mangrove" lower any boat. The "Indiana" sent a boat and officer.

Interrogatory 9. State whether you saw anything pass between the "Panama" and the "Mangrove" about this time; and if so, state what it was and what it did.

Interrogatory 9. Answer. I saw nothing.

514 Interrogatory 10. If you say that a boat passed between the two vessels, state whether you saw the boat. If so, from which vessel and to which vessel did it pass? Where was it when you saw it, and exactly what did you see? Did you use a glass, or did you see the boat with your naked eye?

Interrogatory 10. Answer. I saw no boat go between.

Interrogatory 11. Were you acquainted with signal flags as used in the Navy at this time? If so, state what acquaintance you have had with such flags, whether by observing others using them, or whether you have had experience in reading signal flags yourself or in making signals with flags.

Interrogatory 11. Answer. No.

515 Interrogatory 12. If you have testified that a boat went from the "Mangrove" to the "Panama," state whether, at that time, in your opinion, signal flags hoisted on the "Mangrove" could have been read from the "Indiana." If you answer yes, state fully why you hold such an opinion.

Interrogatory 12. Answer. I did not see any signal flags; had they hoisted flags I think they could be seen.

516 *Cross-interrogatories administered on behalf of the U. S. S. "Mangrove."*

Cross-interrogatory 1. If you state that you were on the U. S. S. "Indiana" April 25, 1898, about sunset, and saw the chase of the "Panama," state what duty you were performing when you came on deck and how long you stayed; when you first saw the Spanish steamer "Panama," when you first saw the "Mangrove," and in what direction each was going; how close the "Mangrove" came to the "Panama," and if you state the two vessels stopped, then how long they stopped.

Cross-interrogatory 1. Answer. Doing duty as gunner's mate, third class; cleaning gun. Came up on the forecastle to look at the chase. About two hours. The "Panama" was steaming towards Havana. The "Mangrove" was steering close to the "Panama" along the coast. The "Mangrove" came about one ship's length from the "Panama," and the two vessels stopped for about one and one-half hours.

517 Cross-interrogatory 2. State how far you have ever heard a gun fire at sea.

Cross-interrogatory 2. Answer. About one mile.

Cross-interrogatory 3. State how far you have ever seen a boat at sea. If you state that you heard or saw any guns fired from the "Mangrove," state when you heard or saw said guns fired, about what time, which guns they were, port or starboard, and if you heard or saw more than one gun fired, which gun you heard or saw fired first.

Cross-interrogatory 3. About half past seven (p. m.) I heard a gun fired from the "Mangrove." Six-pounder; port, I think. I only heard one gun fired.

518 Cross-interrogatory 4. If you state you saw a boat in the water, then state when you saw it, and what ship it was going to, how large it looked to you, and how many people were in it, and what was the color of the boat.

Cross-interrogatory 4. Answer. About eight o'clock a boat went from the "Indiana" to the "Panama." It was the whaleboat with its crew of about six men and one boarding officer. The boat was white.

519 Cross-interrogatory 5. State whether or not you heard or saw the shot that the "Indiana" fired across the bow of the "Panama," and, if you did, state how near the "Indiana" was to the "Panama" when the shot was fired, and whether the "Panama" was coming towards the "Indiana," and whether it was so dark that if the "Panama" had passed the bow of the "Indiana" she could probably have gotten away before the "Indiana" could have stopped her. State whether it was after or before the shot was fired from the "Indiana" that you saw the boat in the water.

Answer. The "Panama" had stopped her engines altogether and was rolling about in the water. Yes; I think she could have gotten away. No shot was fired from the "Indiana." The boat with boarding officer was lowered in the water close to eight o'clock p. m. I did not see the "Indiana" fire at all.

520 Cross-interrogatory 6. State whether or not it has ever been your duty to read flag signals; if so, state what experience you have had in reading such signals. State what are the sizes of signal flags used in the Navy, and state the farthest distance you have personally ever read a flag signal, when and where you read such signal, and how and why you know the distance was as great as you state it to be.

Cross-interrogatory 6. Answer. No; I have never read flag signals.

521 Cross-interrogatory 7. Did you see the signals made by the "Mangrove" when she captured the "Panama?"

Cross-interrogatory 7. Answer. No, sir.

522 *Cross-interrogatories to be administered on behalf of the U. S. S. "New York" to Alex. Coffee, a witness called on behalf of the officers and men of the U. S. S. "Indiana," now serving on the U. S. S. "Cincinnati."*

1. If on April 25, 1898, you were serving on board the U. S. S. "Indiana," state at what hour she went in pursuit of the Spanish steamship "Panama."

Answer. About nine o'clock p. m. she steamed for the "Panama."

2. How close was the "Indiana" to the U. S. flagship "New York" when the "Indiana" started in pursuit of the "Panama?"

Answer. I did not see the "New York" at all.

523 3. Do you remember what signals, if any, were exchanged between the "New York" and the "Indiana" at or about the beginning of the chase of the "Panama?"

Answer. I do not know of any signals between the "New York" and the "Indiana."

4. Did you see the "New York" at or about the time when the "Panama" was boarded by a boat from the U. S. S. "Mangrove?"

Answer. No, sir.

524 5. If you saw her how far distant was the "New York," in your opinion, from the "Indiana?"

Answer. I did not see the "New York" at all.

6. If you state that you saw the "New York" was she not to the westward of you and in the direction of the setting sun?

Answer. I did not see the "New York" at all.

525 7. Did not the fact that the sun was about to set when the "Panama" was boarded by a boat from the "Mangrove" make it more difficult for you to see objects to the westward or in the direction of the sun than to the eastward?

Answer. No, sir.

A. COFFEE,
Gunner's Mate, Second Class, U. S. N.,
U. S. S. "Cincinnati."

526 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York" and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

UNITED STATES STEAMSHIP "CINCINNATI,"
Situated at Colon, United States of Colombia, ss:

On the 28th day of September, in the year nineteen hundred and two, on the U. S. S. "Cincinnati," at the place above stated, personally came Alex. Coffee, a witness, upon call of the officers and men of the U. S. S. "Indiana," and after he was first duly sworn to tell the truth, the whole

truth, and nothing but the truth relative to the cases pending in the Supreme Court of the United States, his statement as contained in the foregoing deposition was taken down in my presence by W. H. Connor, a disinterested amanuensis, and in the presence of the witness, and said deposition was read over to and signed by the witness in my presence. No person was present when said testimony was taken except myself and the witness and the amanuensis aforesaid.

J. C. GILLMORE,
Lt. Commander, U. S. Navy,
Executive Officer, U. S. S. "Cincinnati."

527 (Indorsed:) File No. 17865, &c. Supreme Court, U. S. October term, 1902. Term No. 24 & 34. United States, appt., *vs.* Officers and Crew of U. S. S. "Mangrove," and Officers and Enlisted Men of U. S. S. "New York," &c., appts., *vs.* Officers and Crew of U. S. S. "Mangrove." Testimony of A. Coffee. Filed October 8, 1902.

528 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

Stipulation.

It is hereby stipulated and agreed that the testimony of the witnesses W. J. Lee, chief machinist, U. S. N., and John Geary, water tender, now serving on the U. S. S. "Albany," who are called on behalf of the U. S. S. "Indiana," may be taken on the interrogatories and cross-interrogatories hereto attached, before any commissioned officer of the United States Navy who is not interested in this case as an officer of the "Indiana," "New York," "Wilmington," or "Mangrove" at the time of the capture of the "Panama," acting as commissioner in this cause; and it is agreed that testimony taken before him may be read in evidence the same as if taken before a commissioner duly authorized and appointed by this court.

529 It is further agreed that the Secretary of the Navy be requested to authorize the taking of this deposition in this manner.

GEORGE A. & WM. B. KING,
Attorneys for Officers and Men of the U. S. S. "Indiana."
HENRY M. HOYT,
Assistant Attorney-General.
HERBERT & MICOU,
Attorneys for Officers and Men of the U. S. S. "Mangrove."
MCCAMMON & HAYDEN,
Attorneys for Officers and Men of the U. S. S. "New York."

530 *Instructions to officers in taking testimony.*

1. This testimony may be taken by any commissioned officer of the United States Navy, not present on April 25, 1898, on any of the vessels, the "Mangrove," "Indiana," "New York," or "Wilmington," which are parties to this suit.

2. In taking the deposition, the officer may employ an amanuensis who is in the naval service to transcribe it, but that amanuensis must likewise not be interested in the suit.

3. Each witness, before any interrogatory is put to him, is to be sworn to tell the truth, the whole truth, and nothing but the truth, in the testimony which he is about to give.

4. No other person than the witness, the officer and the amanuensis is to be present when the testimony is taken.

5. The questions are not to be shown to the witness, but when he appears before the officer to testify, then each question is to be read and answered before any other question is shown to him.

6. The statements of the witness in answer to the questions are to be reduced to writing as far as practicable, in the words of the witness.

7. The answer is to follow each interrogatory as written on the following sheets; if space enough is not left for the answers, they may be continued on additional sheets to be duly marked as a portion of the answers to such interrogatory and inserted among the leaves.

531 8. The officer is to sign the official certificate which appears at the close of the papers; he also should put his initials upon each of the other sheets of the deposition.

9. The deposition is to be signed by the witness at its close.

10. Before the witness signs the deposition, it is to be read over either to him or by him.

11. When the deposition is completed in accordance with these instructions, it is to be forwarded by mail, addressed to the clerk of the Supreme Court of the United States, Washington, D. C.

532 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York" and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

Interrogatories to be administered to W. J. Lee and John Geary, witnesses called on behalf of the officers and men of the U. S. S. "Indiana," now serving on the U. S. S. "Albany."

W. J. LEE and JOHN GEARY, being severally duly sworn, depose and say in answer to the interrogatories, as follows:

Interrogatory 1. State your name, age, residence, and present occupation; if in the Navy, your present rank and station.

Reply by William J. Lee: William J. Lee, chief machinist; 40 yrs. of age; home residence, 400 W. 36th st., New York, N. Y.; in U. S. Navy, serving on board the U. S. S. "Albany."

Reply by John Geary: John Geary, water tender, U. S. Navy; 40 years; home residence, 134 Fulton st., Brookly', N. Y.; at present serving on U. S. S. "Albany."

533 Interrogatory 2. On the 25th of April, 1898, what was your occupation? If you state that you were in the United States Navy, state on what vessel you were then serving and what was your rank and grade in the service.

Reply by William J. Lee: Machinist, 1st class, U. S. Navy, and was serving on board the U. S. S. "Indiana."

Reply by John Geary: I was serving in the Navy on board the "Indiana" as a water tender.

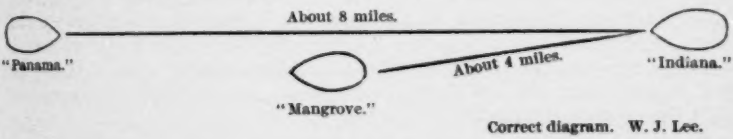
Interrogatory 3. If you state that you were on the U. S. S. "Indiana," state whether you were on deck about sunset.

Reply by William J. Lee: I was on deck, on the forecastle, at about sunset.

Reply by John Geary: I came on deck on the day mentioned about 6.00 p. m., and remained on deck until after the capture of the "Panama."

534 Interrogatory 4. If so, state whether you saw the Spanish steamer "Panama," and if so, state what were the relative positions of the "Panama," the U. S. S. "Mangrove," and the U. S. S. "Indiana" when you first saw the "Panama."

Reply by William J. Lee:



Correct diagram. W. J. Lee.

Reply by John Geary: I saw the "Panama." The "Mangrove" was nearly dead ahead of the "Indiana," if anything a little on the starboard bow, heading in the same direction as the "Indiana." The "Panama" was nearly dead ahead of the "Indiana," if anything a little on the port bow, coming towards the "Indiana."

Interrogatory 5. How long did you continue on the deck of the "Panama?"

Reply by William J. Lee: I remained on the deck of the "Indiana" until the "Panama" was captured and a prize crew was put aboard her.

Reply by John Geary: I stayed on the deck of the "Indiana" until 7.45 p. m., when I had to go down on watch. The prize crew from "Indiana" was aboard the "Panama" at that time.

535 Interrogatory 6. Did you, between the time when you first saw the "Panama" and the time when you went below, hear any gun fire from the U. S. S. "Mangrove?" If so, state how many you heard.

Reply by William J. Lee: I saw and heard three guns fired from the "Mangrove."

Reply by John Geary: I saw three guns fired from the "Mangrove," from her port side.

Interrogatory 7. State whether, during the same time, you saw anything of the U. S. S. "Mangrove" indicating the firing of guns. If so, state exactly what you saw.

Reply by William J. Lee: I saw the flash of the guns and the smoke from "Mangrove's" guns.

Reply by John Geary: See reply to above interrogatory.

536 Interrogatory 8. If you say that you heard or saw such gun fire, then state whether the "Mangrove" and the "Panama" approached each other about the time of such firing, and if so, whether you saw any action taken by the "Mangrove" looking toward the capture of the "Panama."

Reply by William J. Lee: From the time of the firing of the first of the "Mangrove's" guns the "Panama" drew away from her and appeared to me that she intended to cross the Indiana's bow. The "Mangrove" prepared to lower a boat after the last gun was fired.

Reply by John Geary: After the third gun was fired from the "Mangrove" she backed and lowered a boat & slewed around towards the port quarter of the "Panama."

Interrogatory 9. State whether you saw anything pass between the "Panama" and the "Mangrove" about this time, and if so, state what it was and what it did.

Reply by William J. Lee: No, not at this time; but a little later on the "Mangrove" lowered a boat, which started for the "Panama."

Reply by John Geary: A boat left the "Mangrove" and pulled towards the "Panama;" but I did not see it board the "Panama."

537 Interrogatory 10. If you say that a boat passed between the two vessels, state whether you saw the boat. If so, from which vessel and to which vessel did it pass? Where was it when you saw it, and exactly what did you see? Did you use a glass, or did you see the boat with your naked eye?

Reply by William J. Lee: I saw, with my naked eye, a boat leave the "Mangrove" and start for the "Panama;" at this the "Panama" was passing the "Mangrove" at full speed, and that was the last I saw of the "Mangrove's" boat, the "Panama" coming between the "Indiana" & "Mangrove" shut out the view of the boat.

Reply by John Geary: I used a glass and the boat is mentioned in reply to interrogatory No. 9.

Interrogatory 11. Were you acquainted with signal flags as used in the Navy at this time? If so, state what acquaintance you have had with such flags, whether by observing others using them or whether you have had experience in reading signal flags yourself or in making signals with flags.

Reply by William J. Lee: I have had no experience with signal flags & do not know them unless I interpreted them by means of a book.

Reply John Geary: I have had no experience with signal flags and do not know anything about them.

538 Interrogatory 12. If you have testified that a boat went from the "Mangrove" to the "Panama," state whether at that time, in your opinion, signal flags hoisted on the "Mangrove" could have been

read from the "Indiana." If you answer, yes, state fully why you hold such an opinion.

Reply by William J. Lee: Signal flags on the "Mangrove" could have been read on the "Indiana." My reason for holding that opinion is, I could distinctly make out all the colors on the Spanish flag on the "Panama" fully five minutes before that time when the "Panama" was much farther from the "Indiana" than the "Mangrove" was.

Reply by John Geary: Yes. I could have made out signals on the "Mangrove," and I say so because I could make out the flag of Spain on the "Panama" at least five minutes before that time.

539 *Cross-interrogatories administered on behalf of the U. S. S. "Mangrove."*

Cross-interrogatory 1. If you state that you were on the U. S. S. "Indiana," April 25, 1898, about sunset, and saw the chase of the "Panama," state what duty you were performing when you came on deck, and how long you stayed, when you first saw the Spanish steamer "Panama," when you first saw the "Mangrove," and in what direction each was going. How close the "Mangrove" came to the "Panama," and if you state the two vessels stopped, then how long they stopped.

Reply by William J. Lee: I was off watch and had just had my supper when I came on deck, and was on deck until after 10.00 o'clock. I had been on deck about one-half hour when I first saw the "Panama," and saw the "Mangrove" about five minutes after I saw the "Panama." The "Mangrove" and "Panama" were going in almost opposite directions. (See diagram in reply to interrogatory # 4, page 7.) The "Mangrove" came, apparently, within two ship lengths of the "Panama." I no not think the "Mangrove" stopped more than a minute, if she stopped at all. The "Panama" did not slack speed until she was stopped by a shot from the "Indiana."

540 Reply by John Geary to Cross-interrogatory No. 1, administered on behalf of the U. S. S. "Mangrove:" I came on deck after supper, having nothing else to do, and stayed there until I had to go on watch, at 7.45 p. m. (See reply to interrogatory #4, page 7.) The "Panama" passed about a quarter of a mile away from the "Mangrove," and it looked to me as if the "Mangrove" stopped a few minutes. I don't think the "Panama" stopped.

541 Cross-interrogatory 2. State how far you have ever heard a gun fire at sea.

Reply by William J. Lee: I have heard the sound of a shot fired at sea about ten miles.

Reply by John Geary: About nine or ten miles.

Cross-interrogatory 3. State how far you have ever seen a boat at sea. If you state that you heard or saw any guns fired from the "Mangrove," state when you heard or saw said guns fired, about what time, which guns they were, port or starboard, and if you heard or saw more than one gun fired, which gun you heard or saw fired first.

Reply by William J. Lee: I have seen a boat at sea about eight miles. I saw three guns fired from the "Mangrove," all from the port battery; these were fired a little after sundown.

Reply by John Geary: Between 6 or 7 miles. (See reply to interrogatory #6, page 8.) None were fired from starboard.

542 Cross-interrogatory 4. If you state you saw a boat in the water, then state when you saw it, and what ship it was going to, how large it looked to you, and how many people were in it, and what was the color of the boat.

Reply by William J. Lee: About—or a little later—when the "Mangrove" fired her last gun she lowered a lead-colored yawl, and it appeared to have three people in it. The yawl left the "Mangrove" and was going towards the "Panama" when I last saw it.

Reply by John Geary: I saw a small boat lowered from the "Mangrove," lead colored, and it had four or five persons in it. The boat pulled towards the "Panama," and I could not judge the size.

543 Cross-interrogatory 5. State whether or not you heard or saw the shot that the "Indiana" fired across the bow of the "Panama;" and if you did, state how near the "Indiana" was to the "Panama" when the shot was fired, and whether the "Panama" was coming towards the "Indiana," and whether it was so dark that if the "Panama" had passed the bow of the "Indiana" she could probably have gotten away before the "Indiana" could have stopped her. State whether it was after or before the shot was fired from the "Indiana" that you saw the boat in the water.

Reply by William J. Lee: I saw the shot fired by the "Indiana" across the bow of the "Panama," the "Indiana" at this time being considerably less than a mile's distance from the "Panama." The "Panama" was coming full speed towards the "Indiana." No; it was not dark. It was about the last part of twilight and I think it was impossible for the "Panama" to get safely past the "Indiana." The shot was fired a little while after I saw the boat in the water.

Reply by John Geary: I did. The "Mangrove" could not have got away by crossing the bows of the "Indiana." The "Panama" was about ½ mile away when the shot was fired. The boat from the "Mangrove" was in the water before the "Indiana" fired her shot.

544 Cross-interrogatory 6. State whether or not it has ever been your duty to read flag signals. If so, state what experience you have had in reading such signals. State what are the sizes of signal flags used in the Navy, and state the farthest distance you have personally ever read a flag signal; when and where you read such signal, and how and why you know the distance was as great as you state it to be.

Reply by William J. Lee: It has never been my duty to read flag signals. I know nothing whatever about signals. The distance is my own estimate, based upon experience.

Reply by John Geary: I do not know anything whatever about flag signals. I estimated the distance.

545 Cross-interrogatory 7. Did you see the signals made by the "Mangrove" when she captured the "Panama?"

Reply by William J. Lee: I saw signals flying on the "Mangrove," but do not know what they meant. The "Indiana" captured the "Panama."

Reply by John Geary: I saw signals, but the "Mangrove" did not capture the "Panama;" the "Indiana" captured the "Panama."

546 *Cross-interrogatories to be administered on behalf of the U. S. S. "New York," to W. J. Lee and John Geary, witnesses called on behalf of the officers and men of the U. S. S. "Indiana," now serving on the U. S. S. "Albany."*

1. If, on April 25, 1898, you were serving on board the U. S. S. "Indiana," state at what hour she went in pursuit of the Spanish steamship "Panama."

Reply by William J. Lee: At a little before sunset.

Reply by John Geary: As near as I could judge, about 6.45 p. m.

2. How close was the "Indiana" to the U. S. flagship "New York" when the "Indiana" started in pursuit of the "Panama?"

Reply by William J. Lee: I do not know; the "New York" was not in sight.

Reply by John Geary: I did not see the "New York" after leaving the blockading station.

547 3. Do you remember what signals, if any, were exchanged between the "New York" and the "Indiana" at or about the beginning of the chase of the "Panama?"

Reply by William J. Lee: I don't remember that any signals were exchanged between the "New York" and "Indiana."

Reply by John Geary: I do not know.

4. Did you see the "New York" at or about the time when the "Panama" was boarded by a boat from the U. S. S. "Mangrove?"

Reply by William J. Lee: I did not see the "Panama" boarded by any boat from the "Mangrove," nor did I see the "New York" at any time.

Reply by John Geary: No.

548 5. If you saw her, how far distant was the "New York," in your opinion, from the "Indiana?"

Reply by William J. Lee: I never saw the "New York" at all.

Reply by John Geary: I did not see the "New York."

6. If you state that you saw the "New York," was she not to the westward of you and in the direction of the setting sun?

Reply by William J. Lee: I stated I did not see the 'New York" at all.

Reply by John Geary: I did not see the "New York," but she was not to the westward of us in the direction which we were steering.

549 7. Did not the fact that the sun was about to set when the "Panama" was boarded by a boat from the "Mangrove" make it more difficult for you to see objects to the westward or in the direction of the sun than to the eastward?

Reply by William J. Lee: The setting sun rather aided one in seeing objects to the westward on account of it being a little smoky on the horizon, but I did not see the "Panama" boarded by a boat from the "Mangrove."

W. J. LEE.

Reply by John Geary: I think it would be plainer with the sun.

JOHN GEARY.

550 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," and Others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

UNITED STATES STEAMSHIP "ALBANY,"
Situated at Genoa, Italy, ss:

On the 28th day of September, in the year nineteen hundred and two, on the U. S. S. "Albany," at the place above state', personally came W. J. Lee and John Geary, witnesses, upon call of the officers and men of the U. S. S. "Indiana," and after they were first severally duly sworn to tell the truth, the whole truth, and nothing but the truth relative to the cases pending in the Supreme Court of the United States, their several statements as contained in the foregoing depositions were taken down in my presence by A. T. Barnum, a disinterested amanuensis, and in the presence, separately, of each witness, and said depositions were read over to and signed by the witnesses in my presence. No person was present when said testimony was taken except myself and each several witness and the amanuensis aforesaid.

W. R. RUSH,
Lieut. Comdr., U. S. N.

551 (Indorsed:) File No. 17865, &c. Supreme Court U. S., October term, 1902. Term No. 24 & 34. U. S. vs. Officers & Crew & U. S. S. "Mangrove" and Officers & Enlisted Men of U. S. S. "New York," &c., vs. Officers, &c., of U. S. S. "Mangrove." Testimony of W. J. Lee & John Geary. Filed October 9, 1902.

552 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } 24 No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York" and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } 34 No. 17930.

Stipulation.

It is hereby stipulated and agreed that the testimony of the witness, James Golden, seaman, U. S. N., now serving on the U. S. S. "Chicago,"

who is called on behalf of the U. S. S. "Indiana," may be taken on the interrogatories and cross-interrogatories hereto attached before any commissioned officer of the United States Navy who is not interested in this case as an officer of the "Indiana," "New York," "Wilmington," or "Mangrove" at the time of the capture of the "Panama," acting as commissioner in this cause; and it is agreed that testimony taken before him may be read in evidence the same as if taken before a commissioner duly authorized and appointed by this court.

553 It is further agreed that the Secretary of the Navy be requested to authorize the taking of this deposition in this manner.

GEORGE & WM. B. KING,
Attorneys for Officers and Men of the U. S. S. "Indiana."
HENRY M. HOYT,
Assistant Attorney-General.
HERBERT & MICOU,
Attorneys for Officers and Men of the U. S. S. "Mangrove."
MCCAMMON & HAYDEN,
Attorneys for Officers and Men of the U. S. S. "New York."

554 *Instructions to officers in taking testimony.*

1. This testimony may be taken by any commissioned officer of the United States Navy not present on April 25, 1898, on any of the vessels, the "Mangrove," "Indiana," "New York," or "Wilmington," which are parties to this suit.

2. In taking the deposition the officer may employ an amanuensis who is in the naval service to transcribe it, but that amanuensis must likewise not be interested in the suit.

3. Each witness, before any interrogatory is put to him, is to be sworn to tell the truth, the whole truth, and nothing but the truth in the testimony which he is about to give.

4. No other person than the witness, the officer, and the amanuensis is to be present when the testimony is taken.

5. The questions are not to be shown to the witness, but when he appears before the officer to testify then each question is to be read and answered before any other question is shown to him.

6. The statements of the witness in answer to the questions are to be reduced to writing as far as practicable in the words of the witness.

7. The answer is to follow each interrogatory as written on the following sheets; if space enough is not left for the answers, they may be continued on additional sheets to be duly marked as a portion of the answers to such interrogatory and inserted among the leaves.

555 8. The officer is to sign the official certificate which appears at the close of the papers; he also should put his initials upon each of the other sheets of the deposition.

9. The deposition is to be signed by the witness at its close.

10. Before the witness signs the deposition it is to be read over either to him or by him.

11. When the deposition is completed in accordance with these instructions it is to be forwarded by mail, addressed to the clerk of the Supreme Court of the United States, Washington, D. C.

556 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York" and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

Interrogatories to be administered to James Golden, a witness called on behalf of the officers and men of the U. S. S. "Indiana," now serving on the U. S. S. "Chicago."

JAMES GOLDEN, being duly sworn, deposes and says, in answer to the interrogatories, as follows:

Interrogatory 1. State your name, age, residence, and present occupation; if in the Navy, your present rank and station.

Ans. James Golden; age, 42 years; residence, Newark, New Jersey; present occupation, mariner, now serving as seaman, U. S. Navy, on board U. S. S. "Chicago."

557 Interrogatory 2. On the 25th of April, 1898, what was your occupation? If you state that you were in the United States Navy, state on what vessel you were then serving and what was your rank and grade in the service.

Ans. I was quartermaster 1st class, U. S. Navy, serving on board the U. S. S. "Indiana" on April 25th, 1898.

Interrogatory 3. If you state that you were on the U. S. S. "Indiana," state whether you were on deck about sunset.

Ans. I was; I was quartermaster of the watch between 4 and 8 p. m. of that day.

558 Interrogatory 4. If so, state whether you saw the Spanish steamer "Panama," and if so, state what were the relative positions of the "Panama," the U. S. S. "Mangrove," and the U. S. S. "Indiana" when you first saw the "Panama."

Ans. I did see the "Panama." It was about sunset; we were to the southward of the "Panama," and the "Mangrove" was to the northward of us, and between us and the "Panama," and I made out her Spanish flag through the long glass from the masthead.

Interrogatory 5. How long did you continue on the deck of the "Panama?" (Question amended, substituting "Indiana" for "Panama.")

Ans. I was on deck until 8 p. m.

559 Interrogatory 6. Did you, between the time when you first saw the "Panama" and the time when you went below, hear any gun fire from the U. S. S. "Mangrove?" If so, state how many you heard.

Ans. I did not hear the guns, but saw the smoke of two shots.

Interrogatory 7. State whether, during the same time, you saw anything of the U. S. S. "Mangrove" indicating the firing of guns. If so, state exactly what you saw.

Ans. Not any more than what I have said, but I did not hear the reports.

560 Interrogatory 8. If you say that you heard or saw such gun fire, then state whether the "Mangrove" and the "Panama" approached each other about the time of such firing; and if so, whether you saw any action taken by the "Mangrove" looking toward the capture of the "Panama."

Ans. As near as I can state, the "Mangrove" lowered a boat after the firing and approached the "Panama," she dropping her flag and hoisting it again.

Interrogatory 9. State whether you saw anything pass between the "Panama" and the "Mangrove" about this time; and if so, state what it was and what it did.

Ans. Yes; a whale boat which went to the "Panama" from the "Mangrove."

561 Interrogatory 10. If you say that a boat passed between the two vessels, state whether you saw the boat. If so, from which vessel and to which vessel did it pass? Where was it when you saw it and exactly what did you see? Did you use a glass or did you see the boat with your naked eye?

Ans. I did; it passed from the "Mangrove" to the "Panama," and about half way between was when I saw it through the long glass from the mast head.

Interrogatory 11. Were you acquainted with signal flags as used in the Navy at this time? If so, state what acquaintance you have had with such flags, whether by observing others using them or whether you have had experience in reading signal flags yourself or in making signals with flags.

Ans. I was quite familiar with all the Navy code and wigwag and the general code, being a quartermaster 1st class, and have had much experience, for the captain depended upon my judgment more than that of the signal boys.

562 Interrogatory 12. If you have testified that a boat went from the "Mangrove" to the "Panama," state whether, at that time, in your opinion, signal flags hoisted on the "Mangrove" could have been read from the "Indiana." If you answer yes, state fully why you hold such an opinion.

Ans. Yes; because I could read easily and make out easily the colors through the long glass or by binoculars, because I could make out the colors of the "Panama."

563 *Cross-interrogatories administered on behalf of the U. S. S. "Mangrove."*

Cross-interrogatory 1. If you state that you were on the U. S. S. "Indiana," April 25, 1898, about sunset, and saw the chase of the "Panama," state what duty you were performing, when you came on deck, and how long you stayed. When you first saw the Spanish steamer "Panama," when you first saw the "Mangrove," and in what direction each was going. How close the "Mangrove" came to the "Panama;" and if you state the two vessels stopped, then how long they stopped.

Ans. I was quartermaster of the watch and came on deck at 4 p. m. and stayed till supper time, when I was relieved for fifteen or twenty minutes, from 5.20 to 5.40, but was on deck again long before the "Panama" was sighted coming from northeast, heading about southwest, about 6 p. m., and I stayed on deck until 8 p. m. The "Mangrove" was within hailing distance of us between 4 and 5.30 p. m., and when smoke was sighted she started for it. The "Mangrove" was heading about northeast in going to meet the "Panama," and she came about half a mile from her and both vessels stopped for about half an hour.

564 Cross-interrogatory 2. State how far you have ever heard a gun-fire at sea.

Ans. Three miles.

Cross-interrogatory 3. State how far you have ever seen a boat at sea. If you state that you heard or saw any guns fired from the "Mangrove," state when you heard or saw said guns fired, about what time, which guns they were—port or starboard, and if you heard or saw more than one gun fired, which gun you heard or saw fired first.

Ans. With a glass, about 8 miles. I saw the flash and smoke of two guns fired from the "Mangrove," between 6 and 7 o'clock. I don't know which guns they were or which fired first.

565 Cross-interrogatory 4. If you state you saw a boat in the water, then state when you saw it, and what ship it was going to, how large it looked to you, and how many people were in it, and what was the color of the boat.

Ans. I saw the boat in the water after the guns fired between 6 and 7 o'clock from the "Mangrove" going to the "Panama." I recognized it as a whaleboat with one officer in it besides the coxswain and crew. Ensign Dayton was the officer whom I knew. Boat's color, white.

566 Cross-interrogatory 5. State whether or not you heard or saw the shot that the "Indiana" fired across the bow of the "Panama," and if you did, state how near the "Indiana" was to the "Panama" when the shot was fired; and whether the "Panama" was coming towards the "Indiana," and whether it was so dark that if the "Panama" had passed the bow of the "Indiana" she could probably have gotten away before the "Indiana" could have stopped her. State whether it was after or before the shot was fired from the "Indiana" that you saw the boat in the water.

Ans. Yes, I did. The "Indiana" was fifteen hundred yards from the "Panama;" the "Panama" was coming towards the "Indiana." It was not so dark but that the "Indiana" could have captured her. The boat was in the water an half an hour before the "Indiana" fired a shot.

567 Cross-interrogatory 6. State whether or not it has ever been your duty to read flag signals. If so, state what experience you had in reading such signals. State what are the sizes of signal flags used in the Navy, and state the farthest distance you have personally ever read a flag signal, when and where you read such signal, and how and why you know the distance was as great as you state it to be.

Ans. It has. I have been a quartermaster for two cruises from 1893 to 1898, and served on a flagship where I had to read all the signals myself, as I did, too, on the "Detroit." There are two different sizes, Nos. 2 and 3, the first about 4 ft. by 3, and number 3, 3 and ½ feet on the fly, and

about 2½ to 2¼ feet on the hoist. I have read a general signal with the naked eye about 2 or 3 miles, off the blockade in June, 1898, and I estimate this distance, and I have read signals about 8 miles with a glass.

568 Cross-interrogatory 7. Did you see the signal made by the "Mangrove" when she captured the "Panama?"

Ans. No.

569 *Cross-interrogatories to be administered in behalf of the U. S. S. "New York" to James Golden, a witness called on behalf of the officers and men of the U. S. S. "Indiana," now serving on the U. S. S. "Chicago."*

1. If on April 25, 1898, you were serving on board the U. S. S. "Indiana," state at what hour she went in pursuit of the Spanish steamship "Panama?"

Answer 1. As near as I can judge, about 5.50 p. m., but no earlier.

2. How close was the "Indiana" to the U. S. flagship "New York" when the "Indiana" started in pursuit of the "Panama?"

Ans. About 7 miles to the southward and westward, was the "New York" about 5.50 p. m., that day.

570 3. Do you remember what signals, if any, were exchanged between the "New York" and the "Indiana" at or about the beginning of the chase of the "Panama?"

Ans. No; none were made or exchanged.

4. Did you see the "New York" at or about the time when the "Panama" was boarded by a boat from the U. S. S. "Mangrove?"

Ans. Yes.

571 5. If you saw her, how far distant was the "New York," in your opinion, from the "Indiana?"

Ans. She was not less than 7 miles from the position of the "Indiana."

6. If you state that you saw the "New York," was she not to the westward of you and in the direction of the setting sun?

Ans. Yes.

572 7. Did not the fact that the sun was about to set when the "Panama" was boarded by a boat from the "Mangrove" make it more difficult for you to see objects to the westward or in the direction of the sun than to the eastward?

Ans. No, I had no trouble in making her out. It was harder to make out the vessels to the northward and eastward, than those under the land to the southward and westward.

I certify that the above testimony is correct.

JAMES GOLDEN,
Seaman, U. S. Navy, U. S. S. "Chicago."

573 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York" and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

UNITED STATES STEAMSHIP "CHICAGO,"
Situated at Villefranche, France, ss:

On the twenty-fifth day of September, in the year nineteen hundred and two, on the U. S. S. "Chicago," at the place above stated, personally came James Golden, a witness, upon call of the officers and men of the U. S. S. "Indiana," and after he was first duly sworn to tell the truth, the whole truth, and nothing but the truth relative to the cases pending in the Supreme Court of the United States, his statement, as contained in the foregoing deposition, was taken down in my presence by me, and in the presence of the witness, and said deposition was read over to and signed by the witness in my presence. No person was present when said testimony was taken except myself and the witness.

G. MOSER, Jr.,
Lieut., U. S. Navy.

574 (Indorsed:) File No., 17865, &c. Supreme Court U. S. October term, 1902. Term Nos., 24 & 34. U. S. vs. Officers & Crew of U. S. S. "Mangrove," &c., and Officers, &c., of U. S. S. "New York," applt., vs. U. S. S. "Mangrove." Testimony of James Golden. Filed Oct. 10th, 1902.

575 Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
against
OFFICERS AND CREW OF U. S. S. "MANGROVE."

OFFICERS, ETC., OF U. S. S. "NEW YORK," "Indiana," and "Wilmington," appellants,
against
OFFICERS AND CREW OF U. S. S. "MANGROVE."

NEW YORK, *August 19, 1902.*

Testimony on behalf of U. S. S. "Indiana."

Kimball, Howard A.,	5	7	10	10
Maybaum, Edward F.,	11	13		
Burns, Thomas F.,	17	20	24	

576 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
against
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," "Indiana," and "Wilmington," appellants,
against
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

STATE OF NEW YORK,
City and county of New York, ss:

Be it remembered that on the 19th day of August, 1902, before me, Samuel A. Jenkins, a commissioner of deeds in and for the said county and State, personally came Howard A. Kimball, Edward F. Maybaum, and Thomas F. Burns, witnesses called to testify on behalf of the officers and men of the U. S. S. "Indiana," and by agreement of the parties to said causes, to wit, The United States, appearing in this instance by William B. King, esq., attorney for the U. S. S. "Indiana;" the officers and enlisted men of the U. S. S. "Mangrove," appearing by Benjamin Micou, esq.; the officers and enlisted men of the U. S. S. "Indiana" and U. S. S. "Wilmington," appearing by William B. King, esq.,
577 and the officers and enlisted men of the U. S. S. "New York," appearing by interrogatories propounded by James H. Hayden, esq., to all of the witnesses named except Howard A. Kimball; and the said Howard A. Kimball, Edward F. Maybaum, and Thomas F. Burns were then severally duly sworn to testify truly in the aforesaid causes, and having been by me duly sworn to testify the truth, the whole truth, and nothing but the truth, their testimony was taken down in writing by Margaret E. Hellstern, a disinterested amanuensis, agreed upon by the parties, in shorthand, and thereafter transcribed in typewriting.

Witness my hand and seal this twenty-sixth day of August, 1902.

[SEAL.] SAMUEL A. JENKINS,
Commissioner of Deeds (24), New York County.

578 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
against
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," "Indiana," and "Wilmington," appellants,
against
"THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 17930.

NEW YORK, *August 19, 1902.*

Appearances: William B. King, esq., for U. S. S. "Indiana;" Benjamin Micou, esq., for U. S. S. "Mangrove."

HOWARD A. KIMBALL, being duly sworn and examined as a witness on behalf of the U. S. S. "Indiana," deposes and says:

By Mr. KING:

Q. State your name, age, and present occupation.

A. Howard A. Kimball; 29 years; I am at present assistant credit man of a dry goods commission house on Broome street.

Q. What was your occupation on April 25, 1898?

A. I was navigator's writer on the U. S. S. "Indiana"—second-class yeoman.

579 Q. Were you on the U. S. S. "Indiana" on the afternoon of April 25, 1898?

A. I was.

Q. Please state on what part of the vessel you were during the time preceding the capture and including the capture of the Spanish steamer "Panama."

A. On the forward part of the bridge just abaft the pilot house.

Q. Will you please state whether you saw the "Mangrove" during the chase of the "Panama?"

A. Yes.

Q. Please state what you remember in regard to the firing of a shot or shots from the "Mangrove" about this time.

Q. I remember hearing a report; I also remember seeing a gun fired. I won't be sure as to how many—one, I think. I don't remember any more. I took very little interest at the time in the thing, so that it practically escaped my memory.

Q. What do you mean by saying that you took very little interest in it at the time?

A. Well, I didn't think that such a question would ever come up, therefore I didn't remember it—didn't jot it down in my mental chambers.

Q. Please state what you saw or heard in regard to the "Mangrove" and the "Panama" after this gun fire which you have just mentioned.

A. The "Mangrove" sent a boat to the "Panama;" we were some distance off at the time, and we were approaching them. Later the "Panama"—well, she was under way all the time, of course, but started up, the "Mangrove" following, and as we approached we saw the flag flying and—I forget—we fired three shots—I forget who fired the first

580 one; the two later ones I know were fired by Boatswain Dowling across her bow, and she hauled down the flag. I had always supposed that that was the token of surrender.

Q. You speak of the "Mangrove" sending a boat to the "Panama;" please state how you were able to state that fact.

A. I saw it. I don't know as I could say what kind of a boat it was, if that is what you mean—whether it was a cutter or a whaleboat—I didn't notice. I know I saw a boat going to the "Panama."

Q. Are you acquainted with the signal flags used in the Navy?

A. I was at the time. If you would ask me to tell one number now I couldn't do it.

Q. Please state what your acquaintance was, whether the standard reading signals or otherwise.

A. Oh, I could read a number, as far as that is concerned; the numbers have to be referred to the signal book to make out what they mean, except a few general signals of the International Code that one learns in time. I could read numbers with the flags at that time, not now.

Q. Please state whether at the time when the "Mangrove's" boat went to the "Panama," signal flags hoisted on the "Mangrove" could have been read from the "Indiana."

A. Undoubtedly.

Cross-examination by Mr. MICOU:

Q. What duty were you engaged in that afternoon?

A. Practically none. As log writer, you understand, my duties weren't very onerous. After I wrote up the log, unless there
581 was something in the library or something around, I had nothing to do—sight-seeing, I guess.

Q. Was it at any time while you were in the naval service part of your duty to read signals?

A. No; but every man is required to learn the signals, among the deck force.

Q. Then your knowledge of signal reading is simply what you observed from being aboard ship, is it?

A. No, it wasn't. It was what I was taught while aboard the ship. Every man among the deck force is taught signals; and beside that fact I was connected with the navigator's department, and therefore took an interest in such things. Although I wasn't in the signal department, I took an interest in it.

Q. Now, which gun was it that you saw fired from the "Mangrove?"

A. That would be a hard matter to tell.

Q. Can not you give any idea?

A. No, I wouldn't—let me see; the only way I could tell was to remember how the "Mangrove" was pointed and judge as to what gun would have been fired.

Q. How was she pointed?

A. I should say one of the starboard forward guns. She was on the port side of the "Panama," a trifle aft; following astern on the port side. Naturally she would fire her starboard forward gun, I should think. That is merely, you understand—I merely suppose that that would be the gun; I don't recollect.

Q. How large did this boat look that you saw?

A. The "Mangrove" didn't carry any large boats.

Q. How large did it look on the water?

582 A. I should say it was 28 or 30 feet long, maybe.

Q. How many people were in it?

A. It is a long time to have to remember such a thing—8 or 10 possibly; possibly more, one or two more. If it was a cutter—a cutter carries ten to twelve oarsmen beside a coxswain, and then, of course, Lieutenant Dayton, of the "Mangrove," would have been in the boat. If it was a whaleboat there wouldn't have been so many men—8.

Q. Now, if shortly after this, you had not met the "Panama" and the "Mangrove" and learned that a capture had taken place, would you have been sure that you saw a boat in the water?

A. Why, I didn't learn that the capture had taken place; I saw the capture take place. I don't quite understand your question.

Q. I asked if afterwards you had not learned that a capture of the "Panama" by the "Mangrove" had taken place, would you have been certain that this object you say you saw in the water was a boat?

A. Oh, yes; I know a boat from anything else.

Q. How do you distinguish a boat from any other object in the water?

A. Well, a log in the water wouldn't have men on the log. I see moving objects in the boat. You can easily distinguish a boat from most any other object in the water. Ten or twelve miles at sea you don't see men in anything else but a boat.

Q. Can you see a boat ten or twelve miles at sea?

A. No; but we were ten or twelve miles at sea.

Q. How far have you ever seen a boat at sea?

A. I don't know how far out I could see a boat at sea. I don't
583 care to answer such a question. I don't see why that has anything to do with this.

Q. Where were you when the gun was fired by the "Indiana" across the bow of the "Panama?"

A. I stood directly behind the man who fired the gun. In fact, my recollection is that I handed him the cartridge.

Q. How far away was the "Panama" from the "Indiana" at that time?

A. I should think between 400 and 500 yards. It is merely my opinion, because such a thing—it is hard to determine distance on the water.

Q. How long were you in the naval service?

A. Three years exactly.

Redirect examination by Mr. KING:

Q. I should like to have you explain whether you mean to say that you could see how many men there were in the boat?

A. I couldn't. I didn't say how many men. He asked me the size of the boat and I told him I couldn't tell the size of the boat.

Recross-examination by Mr. MICOU:

Q. Can not you tell how large that boat looked to you as you saw it in the water?

A. Not at this late day; no.

[SEAL.]

SAMUEL A. JENKINS,
Comm'r of Deeds (24), New York County.

584 EDWARD F. MAYBAUM, being duly sworn and examined as a witness on behalf of the U. S. S. "Indiana," deposes and says:

By Mr. KING:

Q. State your name, age, residence, and occupation?

A. Edward F. Maybaum, 26 years of age, Whitestone, Long Island; silk merchant.

Q. On the 25th of April, 1898, what was your occupation?

A. Seaman aboard the "Indiana."

Q. Were you on deck on the afternoon of that day?

A. I was.

Q. What part of the vessel were you on?

A. Starboard side of the forecastle—that is, the forecastle.

Q. Did you see the "Mangrove" when she left the "Indiana" on the afternoon of that day?

A. After the capture?

Q. No, before the capture.

A. No; I did not. I don't remember seeing her.

Q. When did you come up on deck?

A. I can't state the exact time, but I had been up on deck for some time. I should judge five o'clock.

Q. When you came on deck, please state whether you could see the "Mangrove" and any other vessel?

A. When I came on deck I didn't notice.

Q. How soon did you observe the "Mangrove?"

A. My attention was called to her by shots being fired from her, and I crossed over on the other side of the deck.

Q. Did you hear any shot fired from the "Mangrove?"

A. I did not hear them.

Q. How do you know, then, that the shots were fired?

585 A. Seeing the smoke.

Q. Can you tell just what you saw?

A. An ordinary discharge of a six-pounder—puff of smoke—flash.

Q. After the gun fire from the "Mangrove" state what happened.

A. Both boats were stationary—apparently so—and I saw a boat leave the "Mangrove" and proceed to the "Panama."

Q. When you say both boats were stationery, which boats do you mean?

A. The "Mangrove" and "Panama."

Q. Did you have a glass at this time?

A. I did not.

Q. How did you know that it was a boat going from the "Mangrove" to the "Panama?"

A. I saw her.

Q. Did you have any experience in signaling while you were in the Navy?

A. I received instructions in signaling.

Q. Could you read flag signals?

A. I could.

Q. How long were you in the Navy?

A. Three years.

Q. Will you please state whether at the time when the boat went from the "Mangrove" to the "Panama" you could have read flag signals hoisted on the "Mangrove" from the "Indiana?"

A. With the aid of a glass and a book.

Q. Why do you say that you could have read signals at that time?

A. I feel positive—why—well, seeing a boat pulling across the water, you can read signals—from previous experiences of distance while I was in the Navy.

Being cross-examined upon interrogatories submitted by counsel for the U. S. S. "New York," the witness says:

586 Interrogatory 1. If, on April 25, 1898, you were serving on board the U. S. S. "Indiana," state at what hour she went in pursuit of the Spanish steamship "Panama."

A. Between the hours of six and seven.

Interrogatory 2. How close was the "Indiana" to the U. S. S. flagship "New York" when the "Indiana" started in pursuit of the "Panama?"

A. I don't know.

Interrogatory 3. Do you remember what signals, if any, were exchanged between the "New York" and the "Indiana" at or about the beginning of the chase of the "Panama?"

A. I don't remember any signals being exchanged.

Interrogatory 4. Did you see the "New York" at or about the time when the "Panama" was boarded by a boat from the U. S. S. "Mangrove?"

A. I did not.

Interrogatory 5. If you saw her, how far distant was the "New York," in your opinion, from the "Indiana?"

A. I didn't see her.

Interrogatory 6. If you state that you saw the "New York," was she not to the westward of you and in the direction of the setting sun?

A. I don't know whether she was to the westward or to the eastward; I couldn't say; I didn't see her at all.

Interrogatory 7. Did not the fact that the sun was about to set when the "Panama" was boarded by a boat from the "Mangrove" make it more difficult for you to see objects to the westward, or in the direction of the sun, than to the eastward?

A. Yes, sir.

Cross-examination by Mr. MICOU:

587 Q. What was this training that you had as a seaman in signaling?

A. We had regular instructions, signal periods, during the week. Two times, I believe.

Q. Two times a week?

A. To the best of my recollection.

Q. Did you make signals at those times, or was it theoretical instruction?

A. No; we made signals; practical instructions. We made them in practice.

Q. Where were those signals made from?

A. We used to hoist them to the turret; somebody climbed up on the turret and we would pull them up after us, and the officer in charge would then ask us to read the flag numbers of the signals or make a signal.

Q. Where would you be when you read those flag numbers—on another ship?

A. No; on the same ship.

Q. Then you practiced reading these signals hoisted up on the same ship on which you were?

A. In our study period.

Q. Now, then, did you ever have any duty as a seaman of actually sending signals or receiving signals?

A. I have had.

Q. What sort of duty?

A. From the shore to the ship; wigwag signals.

Q. On what occasions were those?

A. At Tompkinsville, and then when we were in Cuba, Guantanamo, I wigwagged from the target to the officer in charge at the butts.

Q. How far was the target from the butts?
A. 500 yards. They had two targets, 350 and 500 yards.
Q. How far was this signaling at Tompkinsville?
A. I judge a mile.
588 Q. Does that comprise your experience at actually sending and receiving signals?
A. No, sir.
Q. What else?
A. An officer would very often ask, "Did you see that signal?" "Did you notice what they signaled?" or "What was the number run up?" or "What was the coal report?" We used to read coal reports and sick reports, absentees every morning from the different ships, and the uniform numbers.
Q. About at what distance did you use to read those?
A. From the flagship to wherever we were laying; a mile, sometimes a mile and a half, sometimes two or three miles at sea.
Q. This gun that you saw fired from the "Mangrove"—what gun was that; a port gun or her starboard gun?
A. I should judge it was up in the bow, up forward—port or starboard side—forward.
Q. You say that you saw this boat leave the "Mangrove?"
A. Yes, sir.
Q. Did you see it going back from the "Panama" to the "Mangrove?"
A. I didn't see it return—when it got back to the "Mangrove." I saw it on its way back.
Q. Did you see it arrive alongside the "Panama?"
A. I did not.
Q. What was it you saw then, just something in the water?
A. No, sir; a boat.
Q. What did it look like?
A. It looked like a boat 15 ft. long.
Q. How long did it look at that distance?
A. About two ft.
589 Q. What color was it?
A. I couldn't distinguish the color.
Q. Was anybody in it?
A. Yes, sir.
Q. Could you distinguish how many people were in it?
A. No.
Q. How many appeared to be in it?
A. Five.
Q. Where were you when the "Indiana" fired its gun?
A. Right on the port side of the forecastle.
Q. Did you see that?
A. I did, sir.
Q. How far was the "Panama" off then?
A. When we fired the gun?
Q. Yes.
A. I should judge a mile to two miles.

[SEAL.] SAMUEL A. JENKINS,
Comm'r of Deeds (24), New York County.

590 THOMAS F. BURNS, being duly sworn and examined as a witness on behalf of the U. S. S. "Indiana," deposes and says:

By Mr. KING:

Q. Please state your name, age, present residence, and your occupation.

A. Thomas F. Burns; age, 23; residence, 21 Hazel place, Newark, N. J.; occupation, machinist.

Q. Were you ever in the United States Navy?

A. Yes, sir.

Q. During what period were you in the Navy?

A. From November, 1895, until the 20th day of February, 1900.

Q. What was your grade in the Navy at the time?

A. Apprentice; third, second, and first class; and quartermaster, third class.

Q. On the 25th of April, 1898, what vessel were you on?

A. U. S. S. "Indiana."

Q. What particular service were you assigned to about that time?

A. What they term on deck "general service."

Q. On the afternoon of that day, state on what part of the vessel you were?

A. I was all over; I was at various parts.

Q. Were you on deck or below?

A. On deck.

Q. Were you on deck when the "Mangrove" left the "Indiana" to go to Key West in the afternoon?

A. I may have been on deck, but I didn't notice the incident.

Q. Did you that afternoon observe the Spanish steamer "Panama" at any time?

A. No, not until in the evening; not in the afternoon, I didn't.

Q. Where was the "Panama" when you first saw her?

A. She was heading towards the "Indiana" and, I should judge,
591 about three miles off the port bow of the "Mangrove," the "Mangrove" in pursuit.

Q. Please state any incident that you saw or heard connected with that pursuit; any incident that came under your observation connected with that pursuit.

A. The incident that came under my observation—I see the "Mangrove" in pursuit of a vessel steaming in our direction, and seeing the flash of guns from the "Mangrove" I knew immediately that she was an enemy's vessel, and that the "Mangrove" was in pursuit to capture her.

Q. After the gun fire, which you have referred to, did you observe whether either the "Mangrove" or the "Panama" stopped?

A. That was impossible, owing to the heading of the ships and the position we were in; they were heading towards us. You couldn't tell whether they were stopped or not, unless you had a powerful glass to see. With the naked eye you couldn't tell.

Q. Will you please state whether under your observation there was any communication between the "Mangrove" and the "Panama" about this time.

A. Nothing other than a boat—lowering of a boat from the "Mangrove."

Q. Please state whether you saw that boat.

A. I saw her; she was a Government dinky.

Q. What did you see particularly in regard to that boat?

A. I see her into the water, men get into her, leave her, and make for the "Panama."

Q. Did you see her return?

A. No; I didn't see her return.

Q. Had you any experience in connection with signaling while you were in the Navy up to that time?

592 A. Up to that time I had—during my nine months' training cruise with the naval station at Newport I had considerable service, and I had considerable actual service when on board the "Indiana" before the war and after the war; in fact, I was a signal boy for upwards of eighteen months or two years.

Q. Had you been a signal boy before this date, April 25, 1898?

A. Yes, sir.

Q. How long before?

A. Nine months.

Q. What were the special duties of the signal boys?

A. Sending and receiving all messages that occurred in the squadron, either from the ships of the squad or any of the American ships; not only Government signals, but you have got to receive international signals from foreign ships. It is another code, but it is used all during the sea service.

Q. Will you please state whether when the "Mangrove's" boat went to the "Panama" a signal hoisted on the "Mangrove" could have been read from the "Indiana" with a proper glass?

A. It could have been read with the ordinary binoculars; yes, sir.

Q. Why do you say that?

A. Well, I know it is a positive fact from experience as a signalman.

Being cross-examined upon interrogatories submitted by counsel for the U. S. S. "New York," the witness says:

Interrogatory 1. If on April 25, 1898, you were serving on board the U. S. S. "Indiana," state at what hour she went in pursuit of the Spanish steamship "Panama."

A. I should judge between five and six.

593 Interrogatory 2. How close was the "Indiana" to the U. S. S. flagship "New York" when the "Indiana" started in pursuit of the "Panama?"

A. I couldn't say.

Interrogatory 3. Do you remember what signals, if any, were exchanged between the "New York" and the "Indiana" at or about the beginning of the chase of the "Panama?"

A. I don't know of any, no; what were sent?

Interrogatory 4. Did you see the "New York" at or about the time when the "Panama" was boarded by a boat from the U. S. S. "Mangrove?"

A. No.

Interrogatory 5. If you saw her, how far distant was the "New York," in your opinion, from the "Indiana?"

A. I didn't see her, so I couldn't judge.

Interrogatory 6. If you state that you saw the "New York," was she not to the westward of you and in the direction of the setting sun?

A. I couldn't say.

Interrogatory 7. Did not the fact that the sun was about to set when the "Panama" was boarded by a boat from the "Mangrove" make it more difficult for you to see objects to the westward or in the direction of the sun than to the eastward?

A. It would; yes.

Cross-examination by Mr. MICOU:

Q. What are the duties of a signal boy?

A. To receive all messages and send all messages during his watch.

Q. What sort of signals; flag signals?

A. It depends on day or night.

594 Q. Does he do this thing himself or does he aid in it; isn't there an officer that superintends the sending of signals?

A. Sometimes; sometimes not. He is liable to be called down to make such and such a signal and he has to go up and make it.

Q. Now, then, what does he do; he runs up the flag or waves the flag?

A. If it is a flag signal, if it is what they term "general flag." If wigwagging it is made by the wigwag flag; if it is a sound signal it is made by the siren whistle.

Q. Then when you speak of receiving signals, does the signal boy alone receive signals and report what they are, or is there some officer who takes them?

A. There is two signal boys on watch as a rule, always.

Q. Who else is there that looks after them?

A. The quartermaster, but he has nothing to do with signals.

Q. Who reads them?

A. The signal boy reads them.

Q. Who is responsible for their being sent correctly and received correctly?

A. The signal boy, during his watch, of course.

Q. Do you mean that the trust of sending and receiving all signals of the Navy is in what is known as the signal boy without the superintendence of an officer who really reads the signals and tells what signals should be sent?

A. Not all signals; the general signals, at a certain hour; there is an officer on the bridge, but the signals during the signal boy's watch—I don't know what the present way is, I have been out of the Navy two years—but during my time it was the signal boy usually. I sup-

595 pose he was examined and had to be competent to take the position before he got it.

Q. How long was your watch as signal boy?

A. Four hours on, eight off—four on, twelve off, alternately; and the fourth day, all off.

Q. Where did you do your duty when on watch?

A. On the bridge.

Q. Who else was on the bridge with you when you were on watch, as a rule?

A. As a rule, the other signal boy and the quartermaster.

Q. Wasn't there some commissioned officer always on the bridge?

A. Always when at sea—yes. The officer of the deck, he commanded the ship. He is on the bridge.

Q. Now you are speaking of when you are at sea, are you?

A. Well, when we are at sea there is an officer on the bridge that is in charge—the officer of the deck. He is down on the quarter-deck, and you receive the signal and report it to him, and it is put in the record book.

Q. At sea, doesn't he receive the signal?

A. No, sir. He may receive them, but he doesn't know them until he looks at the book himself, and half of them don't know them. Some of the cadets don't know the flags.

Q. Doesn't everybody, when they receive signals, have to look at the book for an interpretation?

A. Sometimes. A good many of them you can memorize.

Q. What is the greatest distance that you ever read a signal?

A. Day or night?

596 Q. Daytime?

A. I should judge fully five miles. From the harbor of San Lucia to outside it is fully that much, I should judge.

Q. Did I understand you to say that it was impossible to tell whether the "Mangrove" and the "Panama" stopped at the time?

A. Yes, sir; it was impossible with the naked eye to discern whether they had stopped or not, owing to the "Mangrove's" slow speed anyhow.

Q. How far can you see a boat 15 or 18 feet long?

A. On a clear day, level sea, I can see her fully five miles from the elevation of a ship's deck.

Q. You say you saw these men getting down into her?

A. I saw the men in the boat.

Q. How many did you see?

A. I should judge there was about eight men in the boat; owing to her being a dinky it is about all she would hold.

Q. You base that on what you remember of her being a dinky and that being her seating capacity?

A. I should judge there would be about eight in her according to the way she set in the water, as far as I could see.

Q. What was the color of that boat?

A. I couldn't really tell you the color; I should judge that she was the same color as all the boats; I couldn't tell.

Q. What is that?

A. What they term the "invisible gray."

Q. How far was the "Indiana" from the "Panama" when she fired this shot across the bow?

597 A. I should judge anyway between 400 and 600 yards, to the best of my recollection.

Q. Are you certain that you can read a signal at any distance you could see a boat 15 or 18 feet long in the water?

A. I am certain you can read them further.

Q. Why are you certain?

A. The colors of the signals and the elevation of the signals.

Redirect examination by Mr. KING:

Q. I would like to have you state how it is that you could see the

boat moving in the water and yet you say that you could not see whether the "Mangrove" stopped?

A. The difference in the heading of the two boats.

Q. What is that difference?

A. The "Mangrove" was heading towards us and her boat shoved away from her; she headed away from the "Mangrove," thereby crossing our bow.

By Mr. MICOU:

Q. How long was it after you saw this boat in the water that the "Indiana" fired the shot across the bow of the "Panama?"

A. I couldn't tell you exactly; I should judge about twenty minutes.

SAMUEL A. JENKINS,
Comm'r of Deeds (24), New York County.

598 (Indorsed:) File No. 17865, &c. Supreme Court U. S. October term, 1902. Term Nos. 24 & 34. U. S. vs. Officers & Crew of U. S. str. "Mangrove" and Officers, &c., of U. S. ship "New York" et al. vs. Officers, &c., of steamer "Mangrove." Testimony of Howard A. Kimball, Edward F. Maybaum, & Thomas F. Burns. Filed Oct. 16, 1902.

599 Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
against
OFFICERS AND CREW OF U. S. S. "MANGROVE."

OFFICERS, ETC., OF U. S. S. "NEW YORK," "Indiana," and "Wilmington," appellants,
against
OFFICERS AND CREW OF U. S. S. "MANGROVE."

NEW YORK, *August 19, 1902.*

Testimony of John H. Meehan, on behalf of U. S. S. "Indiana."

600 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
against
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." — No. 17865.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," "Indiana," and "Wilmington," appellants,
against
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." — No. 17930.

STATE OF NEW YORK,
City and county of New York, ss:

Be it remembered that on the 19th day of August, 1902, before me, Margaret E. Hellstern, by consent of parties acting as special commis-

sioner herein, personally came John H. Meehan, a witness called to testify on behalf of the officers and men of the U. S. S. "Indiana," and by agreement of the parties to said causes, to wit: The United States appearing in this instance by William B. King, esq., attorney for the U. S. S. "Indiana," the officers and enlisted men of the U. S. S. "Mangrove" appearing by Benjamin Micou, esq., the officers and enlisted men of the U. S. S. "Indiana" and the U. S. S. "Wilmington" appearing by William B. King, esq., and the officers and enlisted men of the
601 U. S. S. "New York" appearing by interrogatories propounded by James H. Hayden, esq.; and the said John H. Meehan was then duly sworn to testify truly in the aforesaid causes, and having been by me duly sworn to testify the truth, the whole truth, and nothing but the truth, his testimony was taken down in writing by me, in shorthand, and thereafter transcribed in typewriting.

Witness my hand and seal this twenty-third day of August, 1902.

[SEAL.] MARGARET E. HELISTERN,
Acting as Special Commissioner by Consent of Parties.

602 JOHN H. MEEHAN, being duly sworn and examined as a witness on behalf of the U. S. S. "Indiana," deposes and says:

By Mr. KING:

Q. State your name, age, present residence, and occupation.

A. John H. Meehan; my age is 27; residence, 17 East 101st street, New York; no occupation; I haven't been working for some time.

Q. Were you ever in the United States Navy?

A. Yes, sir.

Q. How long were you in the Navy?

A. Three years.

Q. Between what dates?

A. May 20th, 1897, and May 19, 1900.

Q. What vessel were you serving on in the Spanish war?

A. The "Indiana."

Q. Were you on the "Indiana" on the 25th of April, 1898?

A. Yes.

Q. Were you on the deck of the "Indiana" on the afternoon of that day?

A. Yes.

Q. Do you remember when the "Mangrove" left the "Indiana" in the afternoon to go to Key West?

A. Yes.

Q. Please state whether any other strange steamer was sighted during that afternoon by the "Indiana."

A. The "Panama."

Q. What was the "Panama" doing when you first saw it?

A. She was steaming in towards Havana.

Q. What was the "Mangrove" doing?

A. She fired—I am pretty sure she fired—a gun across the bow of the "Panama."

Q. Please state definitely what your recollection is in regard to such a gun fire.

A. I haven't got it certain; I couldn't swear to that part of it;
603 I would like to, though, if I could.

Q. After that gun fire, please state what you observed in regard to the "Mangrove" and the "Panama."

A. I see the "Panama" go straight ahead, and didn't heave to until the "Indiana" fired a six-pounder across her bow—fired the second shot.

Q. What did the "Mangrove" do between firing the shot and the time when the "Indiana" fired the shot?

A. She was steaming on towards the "Panama."

Q. Please state whether you saw any effort on the part of the "Mangrove" to communicate with the "Panama."

A. No.

Q. Please state whether you saw any communication between the "Mangrove" and the "Panama" of any kind whatever.

A. No; I did not.

Q. Did you see anything else in the water beside the "Mangrove" and the "Panama" in the vicinity of those two vessels?

A. The "Indiana."

Q. Anything else?

A. I seen a boat, and I think it left the "Mangrove," and one of our cutters left our ship for the "Panama."

Q. Speaking now of the boat leaving the "Mangrove," please state exactly what you saw.

A. Well, I didn't see—only see her pulling away. I couldn't say whether she went for the "Panama" or whether she was coming to our ship at the time.

Q. Did you observe anything in regard to the direction of the boat?

A. No; because I came down and I went inside then; we were called aft.

Q. Why do you say that it was a boat that you saw?

604 A. Well, I see it.

Q. Have you ever seen signaling on the war vessels of the United States Navy?

A. Yes, sir.

Q. Can you state when or how often you have seen signaling done?

A. I seen them every day.

Q. What sort of signaling have you seen?

A. Different kinds of signaling.

Q. State what different kinds.

A. The international and the naval code, and that is all.

Q. What do you mean by that? How is signaling done by the navy code?

A. They have their own flags.

Q. Judging by what you have seen of signal flags while you were in the Navy, please give your opinion whether, at the time when the boat went from the "Mangrove" that you have spoken of, signals hoisted on the "Mangrove" could have been read from the "Indiana."

A. Yes.

Q. Why do you say that?

A. Because I could see them.

Q. You mean you could have seen them if there had been any hoisted?

A. Yes.

Q. Do you mean to say that any were hoisted on the "Mangrove" at the time?

A. They were hoisted; yes; I seen them.

Cross-examination by Mr. MICOU:

Q. Did you read that signal that was hoisted on the "Mangrove?"
A. Couldn't read them; didn't understand the signals.

MARGARET E. HELISTERN,
Acting as Special Commissioner by consent of parties.

605 (Indorsed:) File No. 17865, &c. Supreme Court U. S. October term, 1902. Term Nos. 24 & 34. U. S. vs. Officers and Crew of U. S. S. "Mangrove," and Officers of U. S. S. "New York," et al. vs. Officers, &c., of Steamer "Mangrove." Testimony of John H. Meehan. Filed October 16", 1902.

606 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 130.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York," "Indiana," and "Wilmington, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 174.

DISTRICT OF COLUMBIA, *ss:*

On this 18th day of August, 1902, personally appeared before me, Marie A. Searles, a notary public in and for the District of Columbia aforesaid, and acting as such in said District of Columbia, and by the consent of the parties acting as commissioner in the aforementioned cases, Littleton W. T. Waller, upon the call of the officers and crew of the U. S. S. "Indiana," who first by me being duly sworn to tell the truth, the whole truth, was thereupon examined by William B. King, esq., for the officers and crew of the U. S. S. "Indiana," and by Benjamin Micou, esq., for the officers and crew of the U. S. S. "Mangrove." The questions and answers hereinafter appearing were duly taken down in shorthand by a disinterested amanuensis, Laura L. Jones, agreed upon by the counsel for the parties aforesaid, and by her reduced to writing.

Witnesseth my hand and seal this 22 day of August, 1902.

[SEAL.] MARIE A. SEARLES,
Notary Public.

607 LITTLETON W. T. WALLER, being duly sworn on behalf of the U. S. S. "Indiana," deposes and testifies as follows:

Being interrogated by William B. King, for the "Indiana," the witness says:

Q. 1. State your name, age, and occupation.

A. Littleton W. T. Waller; 46 years of age; major of the United States Marine Corps.

Q. 2. Where were you on April 25th, 1898?

A. On board the battle ship "Indiana," in the blockade off Havana, Cuba.

Q. 3. Please state in brief the events of that afternoon, beginning with the departure of the "Mangrove" for Key West.

A. The "Mangrove," the "Indiana," and the "Marblehead" had been detailed for special duty, Captain Taylor commanding the "Indiana." The senior officer had given his instructions to the commanding officer of the "Mangrove" to proceed to Key West, but the "Indiana" turned about to communicate with the flagship "New York," overtaking the "Mangrove" after we had finished the communication. On approaching the "New York" we received a signal from the flagship, the nature of which was a strange sail. The stranger had appeared in the distance approaching the "Mangrove" and heading in towards Havana. I don't remember whether the flagship directed us by signal to chase the stranger, but at any rate we did join in. The "Mangrove" fired one gun that I know of at the stranger, and the two ships stopped; that is, the stranger and the "Mangrove." The "Mangrove" turned about, heading in the same direction as the stranger we were approaching. In the meantime, after a few moments' delay, the stranger and "Mangrove" approached us, the stranger going a little faster than the "Mangrove," and
608 showing the Spanish colors. I was directed by the commanding officer of the ship to fire a shot at the stranger. The shot was fired and struck forward of the port bow of the stranger and ricochetted over toward the "Mangrove," making its final plunge into the water very near. I should say that the two ships were at that time about four hundred yards apart—I mean the stranger, which turned out to be the "Panama." The Spanish colors were hauled down, and we communicated with the "Mangrove" by voice, and detailed a prize crew.

Q. 4. During the time referred to, what was your particular duty on board the "Indiana?"

A. I had command of the secondary battery of the "Indiana."

Q. 5. You speak of a shot from the "Mangrove." Please state whether you saw or heard this shot yourself.

A. I saw it. I saw the smoke from the gun.

Q. 6. From the time of the departure of the "Mangrove" which you have spoken of, until the hauling down of the Spanish colors on the "Panama," state whether the "Mangrove" was out of sight of the "Indiana."

A. No.

Q. 7. What sort of an evening was this in regard to clearness in the atmosphere?

A. The atmosphere was clear seaward; hazy toward land, but the "Indiana" was between the two ships (the "Mangrove" and the "Panama") and the land.

Q. 8. Did you observe any time when the "Mangrove" and the "Panama" seemed to stop?

A. They stopped for a while and then proceeded again.

Q. 9. Please state at what distance they seemed to be from the "Indiana" at the time when they stopped.

A. I should suppose about three and a half to four miles. The shot was fired in the direction I gave at an elevation of 4,500 yards.

609 Q. 10. Please state what your experience has been in regard to signaling?

A. I have been teaching signals for twenty-three years.

Q. 11. What practical experience have you had in reading signals?

A. I have trained the men on the "Indiana" (the marines). I have had experience every time I have been to sea in reading signals, and also reading signals on shore.

Q. 12. I should like to have you state whether, after the "Mangrove" left the "Indiana" for Key West until the shot was fired from the "Indiana" toward the "Panama," you could have read the signal hoisted on the "Mangrove?"

A. I think that she was within signal distance the whole time. She had left us only a few moments and we steamed toward the "New York." The "New York" saw the stranger as well as we did. We were not within hearing distance of the "New York" when we were directed or did turn and gave chase to the strange sail.

Q. 13. Can you state whether the signal hoisted on the "Mangrove" could have been read from the "Indiana" shortly after the gun was fired which you saw from the "Mangrove?"

A. I think before the gun was fired we had read signals, certainly afterwards. That is, the ordinarily expert man could do it.

Q. 14. What is your opinion as to the speed of the "Indiana" in approaching the "Mangrove" and "Panama?"

(Objected to by Mr. Micou on the ground of better evidence of the speed of the "Indiana" than the opinion of the witness.)

A. I suppose it would be about seven knots. She was doing the best she could at that time.

610 Cross-examination by BENJAMIN MICOU, Esq.:

Q. 15. This gun that you saw fired from the "Mangrove," was that the port gun or starboard gun?

A. It appeared from the port side.

Q. 16. The port side?

A. Yes.

Q. 17. Now, when you speak of the "Indiana" being distant three and a half to four miles from the two vessels, you were speaking of the time when the "Indiana" shot was fired?

A. No; I was speaking of the time before the "Indiana" shot was fired.

Q. 18. What special time?

A. A few minutes before; we were not very long in the chase at all.

Q. 19. How long before that shot was fired?

A. I would suppose that our ship had approached the two ships and had probably covered a distance of about one thousand yards at that time.

Q. 20. Which two ships?

A. The "Panama" and "Mangrove."

Q. 21. Yes; but what I want is, at what time was it that you speak of when you say the "Indiana" seemed to be three and a half to four miles of the "Mangrove." When was that?

A. That was just a few minutes before the shot was fired. I had dropped my range of 4,500 yards.

Q. 22. Was it at the time you were taking a range to fire the shot?

A. No; before that.

Q. 23. Well, when you took the range, what was that range?

A. I did not actually use any instrument, but simply estimated the range at 4,500 yards.

Q. 24. When did you make that range?

A Just before the shot was fired by the "Indiana."

611 Q. 25. Then did you fire the shot at 4,500 yards?

A. I think so.

Q. 25. How many miles is 4,500 yards?

A. Approximately about three miles.

Q. 26. You say this shot passed over the "Panama?"

A. No; it struck between the two ships on the "Panama." The shot was intended to go across the bow, but it struck in the water and ricochetted almost at right angles and went towards the "Mangrove," and that was on the port side.

Q. 27. Judging from the range that you took and where the shots struck, how far was the "Mangrove" from the "Indiana" when you fired that shot?

A. The "Mangrove" was a little astern of the "Panama." I can not say exactly how far that was.

Q. 28. How far was the "Panama" from the "Indiana" at the time the shot was fired?

A. That shot being accurate, the "Panama" was about 4,800 yards.

Q. 29. When did you first see the "Panama" that afternoon?

A. I saw her before the signal was made by the "New York." We continued to approach the "New York" after we saw her. She showed only smoke, of course, before she appeared in sight.

Q. 30. Did you recognize the "Panama" at the time you fired this shot?

A. Yes; the Spanish flag was still up.

Q. 31. That shot was fired, was it not, on making out the Spanish flag and seeing that she was still flying it?

A. A short while after that; we knew that she was a Spaniard, and appeared to be escaping from the "Mangrove."

Q. 32. What was your duty that afternoon on the "Indiana?"

A. I had command of the marines and secondary battery, which included marines in service also.

612 Q. 33. Were you on deck at that time—from the time you left the "Mangrove" until this shot was fired?

A. Yes; except a short while, just a few minutes; but from the time the "New York" made the signal I was on the turret.

Q. 34. On top of the turret?

A. Yes.

Q. 35. What was the height of that turret from the water?

A. About nineteen to twenty-two feet.

Q. 36. You don't know how long the "Panama" and "Mangrove" stopped, do you, before they came on to meet the "Indiana?"

A. I do not know; we did not take the time.

Q. 37. Were you watching the ships at that time?

A. Watching the ships and watching the battery.

Q. 38. You mean your battery?

A. Yes.

Q. 39. You are familiar with what is known as boat signals in the Navy; that is, small signal flags?

A. Yes.

Q. 40. Do you consider that you were close enough at that time, when the "Panama" and "Mangrove" stopped, to have read boat signals to the "Mangrove?"

A. I think an expert man could have done it.

Q. 41. What, in your opinion, is the greatest distance at which, under reasonably favorable circumstances, signal flags could not be read?

A. I know of signals being read at about eight miles; that is very close measurement.

Q. 42. Was it read intelligently at that time?

A. It would have been distinct after a few moments. I saw another that could not be made out. It was international and could not be made out at closer range, for the wind was blowing directly from us.

613 Q. 43. Where did you say that was? I mean the place that you were speaking of at this eight-mile signal. Did you mention the name of the place?

A. It was nearly off Baiquiri, and we were steaming from Santiago.

Q. 44. How do you know that you were eight miles away from that signal? Was it a measured course?

A. It is about that distance between the mouth of the channel at Santiago and this point—a little this side—about a mile this side of Baiquiri.

Q. 45. What time of day was that?

A. About 9.35 in the morning, 3rd of July, 1898.

[SEAL.] MARIE A. SEARLES,
Notary Public.

614 (Indorsed:) In the Supreme Court of the United States. The United States, appellant, v. The Officers and Crew of the U. S. S. "Mangrove." No. 130. The Officers and Enlisted Men of the U. S. S. "New York," "Indiana," and "Wilmington," appellants, v. The Officers and Crew of the U. S. S. "Mangrove." No. 174. Deposition of Major Littleton W. T. Waller.

615 (Indorsed:) File No., 17865, &c. Supreme Court U. S. October term, 1902. Term Nos., 24 and 34. U. S. vs. Officers and Crew of U. S. Str. "Mangrove;" and Officers, &c., of U. S. S. "New York" et al. vs. Officers, &c., of Steamer "Mangrove." Testimony of Major Littleton W. T. Waller. Filed October 16, 1902.

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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 24.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "New York" and others, appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 34.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

MOTION TO PASS THE CASES.

Now comes the United States and shows the court that under an order of court, entered on the 15th day of April, 1901, the parties to the above causes have procured and are still procuring further proofs. Depositions of certain witnesses already given have not yet been filed in court and certain other depositions still remain to be taken on written interrogatories and cross-interrogatories, which have been duly forwarded to the commissioners.

Wherefore, the United States moves the court to pass the cases pending the filing of depositions, which are now being procured.

J. K. RICHARDS,
Solicitor-General.

We join in the foregoing motion.

McCAMMON & HAYDEN,
Of Counsel for the officers and men of the U. S. flagship New York.

GEO. A. and WM. B. KING,
Of Counsel for the officers and men of the U. S. S. Indiana and Wilmington.

HERBERT & MICOU,
Of Counsel for the officers and men of the U. S. S. Mangrove.

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IN THE

Supreme Court of the United States.

THE UNITED STATES, Appellant, v. THE OFFICERS AND CREW OF THE U. S. S. *Mangrove*.	No. 380.
THE OFFICERS AND CREW OF THE U. S. S. *New York*, THE U. S. S. *Indiana* AND THE U. S. S. *Wilmington*, Appellants, v. THE OFFICERS AND CREW OF THE U. S. S. *Mangrove*.	No. 433.

I. MOTION FOR LEAVE TO TAKE FURTHER PROOF.

Now comes Henry C. Taylor, Rear-Admiral in the United States Navy and commanding officer of the United States Battleship *Indiana* on April 25, 1898, when the Spanish steamship *Panama* was captured, the proceeds whereof are in question in the above-entitled causes, and prays this court, on behalf of the officers and crew of the U. S. S. *Indiana*, for leave to take further proof in regard to the relative position of the said vessel of the U. S. S. *Mangrove* and the Spanish steamer *Panama* at the time of the capture of the *Panama*, in order to show that the *Indiana* was within signal distance of the U. S. S. *Mangrove* when said capture took place.

For cause for this motion he respectfully refers to the affidavits of himself and others herewith presented and to

the considerations set forth in the brief and argument of counsel filed herein.

GEORGE A. & WILLIAM B. KING,
Proctors for Rear-Admiral Henry C. Taylor, commanding officer, and the other officers and crew of the U. S. S. Indiana.

II. AFFIDAVITS SUPPORTING THE MOTION.

IN THE SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES, Appellant,
v.
THE OFFICERS AND CREW OF THE U. S. S. *Mangrove.* } No. 380.

THE OFFICERS AND CREW OF THE U. S. S. *New York*, THE U. S. S. *Indiana* AND THE U. S. S. *Wilmington*, Appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. *Mangrove.* } No. 433.

Affidavit of Henry C. Taylor, Captain U. S. N.

STATE OF NEW YORK, }
County of Kings, } *ss:*

Henry C. Taylor, being duly sworn, deposes and says:

That he is captain in the United States Navy and, during the war with Spain, commanded the United States battleship *Indiana;* that he was in command of said vessel at the date of the capture of the Spanish steamer *Panama*, April 25, 1898, and made claim in accordance with the law for a share in the prize money

due on account of said capture, on behalf of himself and the officers and men of his vessel.

That, after the date of said capture, he was very closely occupied with his professional duties in command of said steamer, beginning with the blockade of Havana, followed by the expedition to Porto Rico and afterward acting in command of the convoy of the army transports from Tampa, Florida, to Cuba, and later taking part in the blockade of Santiago, the battle of July 3d, and the subsequent events in that vicinity. That these engagements in line of duty necessarily took up his time and attention completely and, on this account, he gave little or no consideration to the protection of the interests of the *Indiana* in the capture of the *Panama*, beyond sending in a report to the District Attorney and the Prize Court. That he did not, at the time, suppose that there was any question in regard to the right of the *Indiana* to share in the proceeds of this capture and he believed that his interests would be amply protected by the steps which he had taken and through the action of the United States District Attorney. That, for these reasons, he did not volunteer his testimony nor did he take any care that further testimony was produced aside from the depositions of Chaplain Cassard, Lieutenant Decker and Lieutenant Dawson, sworn to before him on the 30th day of May, 1898, and of Chief Yeoman Murray, sworn to before him on the 30th day of June, 1898.

That, when he was on shore at Key West, he was unable to give any time to the investigation of this matter further than that, on one occasion, he met some one connected with the administration of justice on the steps of the Custom House and asked what should be done in regard to the *Panama* and was by him told that all those things would be arranged and due notice given.

That, at the time of the chase and capture of the

Panama by the *Mangrove*, the *Indiana* was in sight and in signal distance of both vessels and he observed the chase and the capture from the *Indiana*. That, when the *Mangrove* fired a gun and the *Panama* hove to, he distinctly saw smoke shoot out from the gun and saw it so clearly that he observed the direction of it moving from the mouth of the gun. That afterward, when the *Mangrove* dispatched a boat to the *Panama*, he saw said boat in the water moving between the two vessels.

That it was the usual rule in the Civil War that the capture was considered complete when a line was thrown from the captured vessel for the purpose of taking an officer on board or of taking prize in tow. That, while he was within signal distance when the *Mangrove* fired this first gun and when the *Panama* hove to, the *Indiana* was directly approaching the other vessels at this time and, when the boat from the *Mangrove* reached the *Panama*, the *Indiana* was considerable nearer. We could, at this time, have readily seen any signals hoisted by the *Mangrove*.

That, when the guns from the *Mangrove* were fired, he thinks that he was from three to five miles distant. It was light enough at that time to have used the ordinary day signals, and he is fully satisfied that, from the position in which he then stood, he could have read a signal calling for assistance from the *Mangrove* had such been hoisted. That he refers to the ordinary mode of signalling employed in the Navy, by means of flags.

That the failure to see the colors of the *Panama* at 5.55 was rather natural, as the flag was blowing out but very little and the National ensigns used on board ships are generally more or less discolored by smoke and dirt from the ship and long and frequent exposure to the wind and weather, whereas the signal flags are purposely kept clean and bright and may therefore in many instances

be read off with ease, when the ensign at the staff, especially if not blowing out, may be difficult to make out with certainty.

That he did not notice the *New York's* position when the boat from the *Mangrove* was dispatched to the *Panama*, but the *New York* was within easy signal distance of the *Indiana* a short time before. HENRY C. TAYLOR,
Captain U. S. Navy.

Sworn to and subscribed before me this 5th day of February, 1901. MARTHA M. BECK,
[SEAL] *Notary Public.*

IN THE SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. *Mangrove.* } No. 380.

THE OFFICERS AND CREW OF THE U. S. S. *New York*, THE U. S. S. *Indiana* AND THE U. S. S. *Wilmington*, Appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. *Mangrove.* } No. 433.

Affidavit of William G. Cassard, Chaplain, U. S. N.

DISTRICT OF COLUMBIA, *ss:*

William G. Cassard, being duly sworn, deposes and says that he is a chaplain in the United States Navy, and has heretofore testified in the case of the United States *v.* the Spanish steamer *Panama*, in prize, his deposition being

printed on pp. 38 and 39 of the record in the above-entitled causes.

That he has examined the deposition of Apothecary W. W. Ralston, printed on pp. 24 and 25 of the record aforesaid, stating that this affiant remarked to him later that the *Indiana* was out of signal distance and would not share in the prize and this affiant denies absolutely having made any such remark.

That the facts in regard to the presence of the *Indiana* at the time of the capture of the *Panama* are correctly stated in his deposition hereinbefore referred to and he at no time said that the *Indiana* was out of signal distance or that the *Indiana* would not or was not entitled to share in the prize.

That, at the time when the report to the commanding officer that the *Indiana* was coming up, was made as detailed by this affiant in his former deposition as printed on p. 39 of the record aforesaid, he was standing on the upper or superstructure deck of the *Mangrove*, in close proximity to the bridge, in company with Yeoman Murry and a few feet away from Lieut.-Comdr. W. H. Everett and Naval Cadet L. C. Palmer; that he distinctly heard the mate, referred to in said deposition, report that the *Indiana* was coming up. Lieut.-Comdr. Everett and Cadet Palmer were close together at the time, and the report made by the mate was repeated by Naval Cadet Palmer to Lieut.-Comdr. Everett, both the mate and Palmer indicating the direction of the *Indiana*. That, at the time, this affiant recognized the vessel in that direction as the *Indiana* by her shape and outline, clearly discernible with the naked eye. That the identity of the *Indiana* was clearly discernible, the distance being from 3 to 4 miles, as heretofore stated in his aforesaid deposition. That, when this report was made to Lieut.-Comdr. Everett, he did not look in the direction indicated but

said to Cadet Palmer that it could not be the *Indiana* because that was not the direction in which the *Indiana* should be looked for. That, both at this time and at other times during the presence of this affiant on board the U. S. S. *Mangrove*, on the trip from the *Indiana* to Key West, this affiant observed that the eyesight of said Lieut.-Comdr. Everett was very imperfect, it being particularly noticed by this affiant that facts in regard to the compass reading and in relation to night signals when, subsequently, other vessels of the fleet were met, were reported to said Everett by others when the facts were of such a nature and such conditions existed that said facts would naturally have been seen by a person possessing good eyesight and not have required report. That the questions put by said Lieut.-Comdr. Everett in regard to such compass reading and signals, indicated that he could not see them himself but had to depend on others. That, on that same evening, said Lieut.-Comdr. Everett stated to this affiant that his eyesight was bad and troubled him very much.

WILLIAM G. CASSARD.

Sworn to and subscribed before me this 22d day of January, 1901. MARTHA M. BECK.

[SEAL.] *Notary Public.*

IN THE SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES, Appellant,
v.
THE OFFICERS AND CREW OF THE U. S. S. *Mangrove.* } No. 380.

THE OFFICERS AND CREW OF THE U. S. S. *New York*, THE U. S. S. *Indiana* AND THE U. S. S. *Wilmington*, Appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. *Mangrove.* } No. 433.

Affidavit of George L. Mallery, Gunner, U. S. N.

STATE OF NEW YORK, *County of Kings,* } *ss.:*

George L. Mallery, being duly sworn, deposes and says:

That he is a gunner in the United States Navy. That, on the 25th day of May, 1898, he was serving on the U. S. S. *Indiana* as a gunner and was on the said vessel when the *Panama* was captured.

That, during the early part of the chase of the *Panama*, he was below deck; that he came on deck in time to see and distinctly saw the smoke of the gun fired from the U. S. S. *Mangrove* in the direction of the *Panama*. That, when the *Panama* hove to after the firing of this gun, he distinctly saw the boat going from the *Mangrove* to the *Panama*, said boat being in the water between the two vessels at the time. That he saw these things through a glass from the deck of the *Indiana*.

That, during the whole time, from the time he came on deck until the hauling down of the colors of the *Panama*, the *Indiana* was within signal distance of the *Mangrove*, meaning by signal distance that the *Indiana* and

the *Mangrove* could have communicated readily by ordinary methods of signalling, that is, until it became too dark, by ordinary day signals and, after it became too dark for day signals, by lights. That, at no time after his coming on deck as aforesaid, was the distance between the *Mangrove* and *Indiana* such, or the circumstances of atmosphere or other conditions of such a nature that the *Mangrove* could not have readily signalled to the *Indiana* to come to her aid if the *Mangrove* had so desired, and the *Indiana* would have understood such signals.

That the *Panama* did not haul down her colors until a shot had been fired across her bows by the *Indiana*.

G. L. MALLERY,
Gunner, U. S. N.

Witness: FRANK MARBLE,
Lieut. U. S. N.

Sworn to and subscribed before me this 2d day of February, 1901.
THOMAS G. McDONOUGH,
[SEAL] *Notary Public.*

III. BRIEF IN SUPPORT OF MOTION.

IN THE SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES, Appellant,
v.
THE OFFICERS AND CREW OF THE U. S. S. *Mangrove*. } No. 380.

THE OFFICERS AND CREW OF THE U. S. S. *New York*, THE U. S. S. *Indiana* AND THE U. S. S. *Wilmington*, Appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. *Mangrove*. } No. 433.

Brief in Support of the Motion of Rear-Admiral Henry C. Taylor, Commanding the U. S. S. *Indiana*, for Leave to Take Further Proof in Relation to the Right of said Vessel to Share in the Prize.

In the case of *The Panama*, 176 U. S. 535, this court held that the vessel named was prize of war. The question now comes up on the conflicting claims of captors to share in the proceeds of the prize.

Statement of Case.

On the hearing below of those claiming to be entitled to share as captors, claims were filed under Revised Statutes §§ 4614 and 4632, on behalf of the U. S. S. *Mangrove* (Rec. 19), the U. S. S. *Indiana* (Rec. 35), the U. S. S. *Wilmington* (Rec. 44) and the U. S. S. *New York* (Rec. 48).

Depositions in support of these claims were taken upon standing interrogatories especially framed to be answered by parties claiming to share in the distribution of prize money (Rec. 21). On behalf of the *Mangrove*, depositions were taken of the commanding officer (Rec. 30) and ten other witnesses (Rec. 22–34); on behalf of the *Indiana*, those of three subordinate officers (Rec. 38–41) and one of the crew (Rec. 42); on behalf of the *Wilmington*, those of the commanding officer (Rec. 45) and two subordinate officers (Rec. 45); and on behalf of the *New York*, those of two subordinate officers (Rec. 51, 69).

The right of a vessel to share in the distribution of prize money is governed by § 4632 of the Revised Statutes as follows:

"All vessels of the Navy within signal-distance of the vessel or vessels making the capture, under such circumstances and in such condition as to be able to render effective aid, if required, shall share in the prize; * * *"

The issue involved between the different vessels claiming is whether they were "within signal distance of the vessel making the capture." The learned District Judge, in deciding this case, correctly states the nature of this issue as follows (Rec. 53):

"Under our prize law the determination of what vessels are entitled to share in prize money for a capture becomes simply a question of fact. The statute is binding upon the courts, and declares positively that those vessels within signal distance and so situated that they can render assistance if required shall share."

In this case, the facts conceded are that the *Mangrove* was the direct instrument in effecting the capture. The other three vessels claim to be entitled to share as within signal distance. The *Indiana* objects that the facts in regard to their participation are not sufficiently shown by the proofs already taken and asks for leave to take further proof. The *New York* makes a similar motion.

Is the Motion Admissible?

Before discussing the facts of the capture, the preliminary question whether such a motion can be made in this court must be answered. The precedents in this court enable this question to be readily answered in favor of the moving parties, and are so clear that it is quite unnecessary to consider decisions elsewhere.

The first case is that of *The Frances*, 8 Cr. 348. A part of the property was condemned because it was found by the court below to be owned by three brothers, trading as a firm, all naturalized citizens of the United States, of whom one lived in Great Britain and two in the United States. The foreign residence of one of the owners authorized condemnation of his share; the remainder was released. One of the brothers resident in the United

States claimed that the property belonged to him alone and was consequently all exempt. The case was first heard in the District Court and a decree made upon the papers *in preparatorio*. On appeal to the Circuit Court, further proof was directed. Testimony was given by the claimant and eight witnesses in great detail, but the affidavits were not accompanied by certain letters referred to. The court decided that these letters were absolutely essential, saying (p. 353) per Marshall, C. J.: "It is impossible not to perceive their necessity." Notwithstanding that the necessity of producing these letters should have been apparent to the claimant, the court ordered the case to stand "for the production of such further evidence as may place the transaction beyond any doubt." The case illustrates the liberality exercised in permitting the production of evidence designed to clear up controverted questions. It is a broad exercise of power with a view to a final decision upon full consideration of all possible evidence.

A second case on the same vessel, *The Frances*, 8 Cr. 354, presented the case of a conditional consignment, the consignee being permitted to accept or decline the consignment. The nature of the consignment was duly discussed and the court said that the property remained in the consignor and was subject to condemnation, he being a British subject, and that the sentence of condemnation was warranted by the evidence in the court below. The claimants prayed an order for further proof on the ground that the previous acts of the parties, as to similar consignments, had been such as to make this consignment an absolute vesting of the property in the hands of the consignees, American residents. The application, although opposed on the ground that the facts, if proved, would not constitute a legal defence, was granted by the court, and further proof authorized, the court "reserving

any opinion on the law of the case." Yet all the evidence which could be produced under this order must have been available below, had the claimant seen fit to produce it.

In the case of *The Schooner Adeline*, 9 Cr. 244, claims were made by a large number of persons interested in the cargo. The issue was the national character of the owners. Where the owners were French subjects, condemnation was decreed; where American, the goods were released on payment of salvage. The national character was established on the part of twenty-six American and six Frenchmen. The national character not being clear as to the remaining claimants, they were permitted to take further proof. Attention is called here to the fact that thirty-two claimants had foreseen the necessity of establishing national character; the others had, either through ignorance or design, refrained from proving national character, although the need should have been as apparent to them as to the other thirty-two; yet this was not treated as a matter for which they should be held to strict responsibility. They were permitted, after a decision on the law had pointed out the important facts, to present their evidence in this court.

In the case of *The George* and other vessels, 1 Wh. 408, the question was one of collusive capture, many suspicious circumstances being found in the testimony *in preparatorio*. In one of the three cases heard together further proof was allowed in the District Court; in the other two, it was denied. Application was made in all the cases for further proof in the Circuit Court and refused; the application was renewed in the Supreme Court. The Supreme Court, through Chief Justice Marshall, stated the importance of prompt decision where the controversy in prize cases is the question of prize or no prize, but adds (p. 410):

"When the question of prize or no prize is decided in the affirmative, the strong motives for an immediate sentence lose somewhat of their force, and the point to which the testimony *in preparatorio* is taken, is no longer the question in controversy. If another question arises, for instance, as to the proportions in which the owners and crew of the capturing vessel are entitled, the testimony which will decide this question must be searched for, not among the papers of the prize vessel, or the depositions of her crew, but elsewhere, and liberty must, therefore, be given to adduce this testimony. The case of a joint capture has been mentioned, and, we think, correctly, as an analogous case. Where several cruisers claim a share of the prize, extrinsic testimony is admitted to establish their rights."

Upon the question of the application for further proof, the court uses this language (p. 411):

"Under these impressions, the case must be a strong one, indeed; the collusiveness of the capture must be almost confessed before the court could think a refusal to allow other proof than is furnished by the captured vessel justifiable. In the cases before the court there are certainly many circumstances of great suspicion, but none which do not admit of explanation."

The circumstances of suspicion are then carefully enumerated and separately considered, and the court closes the opinion by saying (p. 414):

"Each case depends, in some degree, on the points which have been suggested. They are stated for the purpose of showing that points, on which the judgment of the court may, in some degree, depend, are susceptible of explanation, and, therefore, ought to be explained so far as it may be in the power of the parties to explain them. It is not, however, intended to confine them to the particular points which have been stated. Full liberty is given to both parties to adduce further proof on every point in the case."

This case illustrates the extreme to which this court has gone in its effort to be certain that all possible explanation has been adduced in prize cases.

The London Packet, 2 Wh. 371, is a case in which further proof was ordered in this court, to be taken under a commission. The facts do not appear.

In *The Atalanta*, 3 Wh. 409, the cargo was condemned in the District Court as enemy's property. On appeal to the Circuit Court, further proof was directed, and restitution decreed. The claim was made by a French merchant that the cargo was neutral, carried in an enemy's vessel. Although further proof had been allowed below, the claimant, who had then submitted no testimony but his own in support of his claim, was permitted to produce further proof upon points mentioned by the court, requiring explanation.

The Experiment, 8 Wh. 261, was a case of collusive capture alleged by the United States. Further proof was allowed in this court and the claim was adjudicated upon the original evidence and the further proof produced in this court.

The Sally Magee, 3 Wall. 451, is a case in which ample opportunity for producing full evidence had been given and where the failure to produce evidence was such that the court said (p. 458):

"We can draw but one inference from these facts. It is, that if the evidence were produced, it would be fatal to the claim."

Further proof was not asked for, the appellant insisting that the decree below should be reversed because further proof had not been ordered *sua sponte* by the court below. The court discussed the practice in regard to further proof, although no decision on this point was called for, in the absence of a motion to this end, saying *obiter* (p. 458):

"'Cases of prize are usually heard, in the first instance, upon the papers found on board the vessel, and the examinations taken *in preparatoria;* and it is in the discretion of the court thereupon to make or not to make the order. But the claimant may move for the order, and show the grounds of the application by affidavit, or otherwise, at any time before the final decree is rendered. Such an order may also be made in this court. In one case affidavits were submitted in support of the application, and the order was made after the cause was heard. In another case a parole statement was submitted by the counsel for the claimant before the hearing, and the consequences were the same. The result is always in the discretion of the court, and that discretion is controlled by the circumstances of each case. The order is made with great caution, because of the temptation it holds out to fraud and perjury. It is made only when the interests of justice clearly require it. In the case before us no application was made in the court below, and none in this court."

These positive conclusions are to be drawn from these cases:

(1) That it must be made to appear that the interests of justice require further proof.

(2) That, when it so appears, the court will be liberal in granting an opportunity for further proof.

(3) That further proof is especially to be granted where it is likely to clear up circumstances not adequately explained upon the record before the court.

The Facts of This Case.

Having thus analyzed all the cases reported in this court on this subject, for the ascertainment of the principles to govern this application, the record in this case will now be taken up, together with the additional evidence in hand, with a view to showing that the facts bring this case clearly within the rules announced by this court.

In order to determine whether further proof on points set forth in the affidavits will be of substantial aid to the determination of the case, it is necessary to consider the evidence now in the record and the finding of the District Judge. The evidence divides itself into three classes: that of persons (*a*) on the prize, (*b*) on the *Mangrove* and (*c*) on the *Indiana*.

(*a*) Of the witnesses on the prize, three mention the presence of other vessels than the *Mangrove*, and one was not interrogated on this point. Ramon Burgas, supercargo, says (p. 7) that, at the time of the capture, there were two warships in the distance of which he could see the towers and that they afterward found that these were the *Indiana* and the *Wilmington*. Manuel Quevedo, master, says (p. 14) that there were two ships in sight at the time of the capture, afterward found to be the *Indiana* and the *Wilmington;* Gaspar Thompson, chief engineer, believes (p. 10) that the *Indiana* and another ship were in sight, but he is not positive as to the time as his duties were below. This is all the testimony from the prize. It must be remembered that the interrogatories administered to these witnesses were not addressed at all to the question who were the captors, but were upon the issue of prize or no prize.

(*b*) There are two classes of witnesses from the *Mangrove*, (1) the officers and crew of the *Mangrove* and (2) two persons belonging to the *Indiana* on board as passengers. Their testimony is directly opposed.

The commanding officer of the *Mangrove*, Lieutenant-Commander Everett, says (p. 32) that "at the time of the capture of the *Panama* by the *Mangrove* there were no vessels of the Navy in sight or within signal distance." Naval Cadet L. C. Palmer says (p. 33) that, at the time of the capture of the *Panama*, there were no vessels of the Navy within signal distance; he saw the smoke of a

vessel which he took to be the *Indiana;* he ordered three of the crew to look with their glasses for other vessels; they reported that there was no other vessel in sight and, on looking himself, he saw smoke which he took to be the smoke of the *Indiana.* Mate Cosgrove testifies (p. 35) that Cadet Palmer asked him to look around the horizon with the telescope, which he did, but all he could see was some smoke in the direction of the *Indiana.* Apothecary Ralston testifies (p. 25) to the same effect, as does Mate Peterson (pp. 25, 26). Quartermaster Olssen says (p. 22) that no vessel was within signal distance and that the horizon was clear, except a smoke in the southward and westward. Boatswain's Mate Chipchase says (p. 23) that no vessels were within signal distance and nothing was in sight save smoke to the southward and westward. Coxswain Hansen says (p. 26) that no vessel was in signal distance, only a smoke in the direction of the *Indiana.* Ordinary Seaman Schmitt says (p. 30) that no vessel was in signal distance, that he saw smoke in the direction of the *Indiana,* but no vessel in sight. Gunner's Mate Clinton says (p. 27) that there was no vessel near enough to have made any Navy code signals that they could have understood. Interrogatory 10 is in the following words: "Please state any other facts within your knowledge which you have not yet stated, tending to show what vessels of the Navy were, or were not, within signal distance of the vessel or vessels making the prize?" This is the interrogatory which produced from the witnesses already quoted, the statement that the smoke of the *Indiana* was visible. The last witness, Clinton, answers it with the statement: "Don't apply." Ensign Dayton, answering the 4th interrogatory as to what vessel of the Navy was within signal distance, says (p. 29):

"There was no vessels within signal distance at the time of the capture. By 'within signal distance' I mean

that distance within which any day signals now in use can be read."

He answers the 10th interrogatory by saying, "I have no more facts to state." These answers do not give an impression of complete frankness.

There were on board the *Mangrove* as passengers the chaplain and a chief yeoman of the *Indiana*. Chaplain William G. Cassard says (p. 39) that during the chase of the *Mangrove* he saw the *Indiana* coming rapidly toward them; that the *Indiana* was within signal distance at the time of the capture, three or four miles away, and could have rendered effective aid; that she was within signal distance during the chase and capture from beginning to end, the distance permitting the discernment of signals either visual or sound.

Chief Yeoman Charles E. Murry, attached to the *Indiana*, was aboard the *Mangrove* as a passenger bound for Key West. He says (p. 43) that the *Indiana* was coming up astern during the chase; that he himself loaded the last gun fired by the *Mangrove*; that the *Indiana* was within signal distance at all times during the chase from the time the prize was first sighted until captured; that the ordinary day signals by flags or wigwags could be read by glass from the *Mangrove*.

(c) Lieut. Benton C. Decker, watch officer on the *Indiana*, says (p. 40) that the *Panama* was sighted about 5.15 P. M.; that they headed for her about 6 P. M.; that the *Mangrove* was within easy signal distance when the prize was first sighted; that the chase was within range of the *Indiana's* guns, and that when the prize was boarded the *Indiana* was within signal distance so that shapes or sounds could be distinguished.

First Lieut. William C. Dawson, U. S. M. C., was acting as signal officer on the *Indiana* and says (p. 41) that

the *Panama* when first sighted was six or seven miles away and approached nearer, Pilot Munson on the bridge with him remarking that the vessel looked to him like the *Panama;* that the *Mangrove* was within signal distance of the *Indiana* from about 5.10 P. M. until they came up to the *Panama,* and was in signal distance when the prize was first sighted, signal distance meaning either flag or electric signal, as it might be light or dark; that the prize from the time she was sighted was within easy range of the guns of the *Indiana.*

Direct Contradictions.

Attention is now called to some of the serious contradictions appearing in this testimony.

(1) Lieut.-Commander Everett says (p. 32) positively that no vessels of the Navy were in sight at the time of the capture. Others of the *Mangrove* make the same statement. They are contradicted by the direct testimony of Burgas (p. 7) and Quevedo (p. 14), who were on the prize; by Chaplain Cassard (p. 39) and Chief Yeoman Murry (p. 43), who were on the *Mangrove,* and by Lieutenants Decker (p. 40) and Dawson (p. 41), who were on the *Indiana.*

(2) Chaplain Cassard testifies (p. 39) positively that the *Indiana* was in signal distance at the time of the capture. Apothecary Ralston says (p. 25) that Chaplain Cassard told him after the capture that the *Indiana* was out of signal distance and would not share in the prize.

Chief Yeoman Murry says (p. 43) that the *Indiana* was in signal distance, and Mate Cosgrove says (p. 35) that Chief Yeoman Murry remarked to him after the chase that the *Indiana* was out of signal distance and would not share in the prize.

(4) Chaplain Cassard says (p. 39) that the mate aboard the *Mangrove* reported to the commanding officer that the *Indiana* was coming up. Lieut.-Commander Everett

says (p. 32) that he has set forth fully all the facts in his knowledge tending to show what vessels of the Navy were in signal distance, but he fails to mention this report.

The Reasoning of the Court Below.

The learned District Judge recognized the extremely unsatisfactory nature of this record in the following statement (p. 57):

"The statements of some of these witnesses in regard to time and distance are so utterly inconsistent with what is positively shown to have been the facts of the case, that confidence is shaken in them, but in such a positive contradiction of statements and conflict of testimony it seems to be demanded, if possible, that the circumstances be examined and the testimony reconciled if possible, or at least a reason for the discrepancy sought. To declare that the witnesses of either side have wilfully testified falsely is not a satisfactory conclusion, especially when the character and official standing of many of them is considered, yet such conclusion must be reached unless some explanation of the discrepancy is found."

His conclusion is that the *Indiana* was not in signal distance. He disposes of the testimony of the officers of the prize apparently on the theory that they state that the *Indiana* was in sight, but not in signal distance. But it must be remembered that the *Mangrove's* witnesses say that no other vessel was "in sight." He disposes of the testimony of the officers on the *Indiana* by saying that the *Indiana*, by reason of the sun's position, could see the *Mangrove*, but the *Mangrove* could not see the *Indiana*. But this is a purely conjectural explanation not hinted at in the testimony. It must be remembered also that the issue is whether the *Indiana* could have been called by signal from the *Mangrove*; not whether the *Mangrove* could have read the *Indiana's* signals. He disposes of

the statements of Chaplain Cassard and Chief Yeoman Murry, believing them wilfully untruthful, saying (p.57):

"I have no confidence in the statements of those on board the *Mangrove* that the *Indiana* was so in plain sight at such a short distance, and believe the interest and desire was but the father of the thought and opinion."

But he acknowledges in the extract already quoted that such a conclusion is not satisfactory.

He bases his decision (p. 56) ultimately upon what he considers the undisputed facts shown as to the movements of the vessels. He assumes, without referring to any evidence, that the vessels, having separated between 4.30 and 5, proceeded in directly opposite directions "for nearly an hour." The evidence of the *Indiana's* log (p.35) shows this hour of separation, but, if it shows at all that they were moving directly from each other for "nearly an hour," it shows that the movement continued until six o'clock. Accepting the speed given of the *Indiana*, 10 knots, and the *Mangrove*, 8 knots, they would have been distant in this time 22½ knots or over 25 miles at six o'clock. The argument proves too much. The weakness is that it assumes a direct and continuous movement of the two vessels from each other and makes no allowance for a movement not directly opposite, for changing of courses from lines once begun, or for time taken in making turns by both vessels in their courses. The data are insufficient for a safe basis for the argument. Lieutenant-Commander Everett's testimony is of no value in this connection because he says, producing no log, that the *Indiana* and *Mangrove* parted company "at about 3 or 4 o'clock," a plainly erroneous statement.

The case thus brings itself directly within the rules laid down by this court in early cases as to the allowance of further proof, for we have here (*a*) repeated contradic-

tions of witnesses possibly susceptible of explanation upon full examination and rigid cross-examination of the same and other witnesses and (*b*) an insufficiency of evidence upon the movements of the vessels, a decisive fact in the controversy.

The Inherent Weakness of the Depositions.

Any reading of the depositions forming almost the sole evidence in this case shows their fragmentary nature, due to the unsatisfactory method of taking the testimony. They plainly fail to exhaust the knowledge of the witnesses. Those who can testify to the facts stated must know other material facts. They embrace conclusions without explanation and opinions without disclosure of foundations. The astonishing contradictions of persons of a profession distinguished by a strict regard for veracity have neither been subjected to mutual explanation nor tested by cross-examination.

The Results of Further Proof.

The benefits to be derived from further proof are twofold, (*a*) an explanation of the contradictions already of record and (*b*) the unfolding of additional facts.

What can be produced is indicated by the affidavits filed. Chaplain Cassard denies absolutely the statement of the apothecary that he had said, after the capture, that the *Indiana* was out of signal distance; he adds that Lieutenant-Commander Everett stated to him that his eyesight was defective and that he distinctly heard the mate on the *Mangrove* report that the *Indiana* was coming up and that, at the time, the *Indiana* was clearly discernible. The defectiveness of Lieutenant-Commander Everett's eyesight is a material issue when the controversy is as to the visibility of signals and, if established, will explain the contradictions between his testimony and that of others.

The record itself indicates another field of explanation which ought in the interest of justice to be fully explored. Chaplain Cassard says (p. 39):

"The *Indiana* was within signal distance within three or five miles, and that the prize was between the *Mangrove* and the *Indiana*, the *Mangrove* having passed the prize and turned again towards her."

It is possible that at the very moment when Cadet Palmer and others (pp. 25, 33, 35) looked for vessels and saw only the smoke of the *Indiana*, the *Panama* was between the *Mangrove* and the *Indiana*, and the *Indiana* itself temporarily shut out of sight of the low-lying *Mangrove* by the high hull of the *Panama*. An opportunity for explanation indicated in this way should not be denied.

Additional facts which may serve as instances of those which would be exposed upon further proof are stated by Captain Taylor and Gunner Mallery in their affidavits. They both state that when the boat went from the *Mangrove* after the *Panama*, the actual moment of capture, they saw it in the water. This fact, if established by depositions properly taken, is of the first importance as showing the proximity of the vessels, there being no doubt that signals could be read at a distance where a small boat could be seen in the water. In addition, it negatives the view of the learned district judge that the fact of the *Mangrove* lying low in the water made any difference in her being seen from the *Indiana* or in seeing the *Indiana*.

Captain Taylor states the further fact that, when the *Mangrove* fired and the *Panama* hove to, he distinctly saw the smoke shoot out from the gun and observed the direction of it moving from the mouth of the gun. It can not be said that signals on the *Mangrove* could not have been read from the *Indiana* when the vessels were

near enough for this appearance of the smoke, from as small a gun as those of the *Mangrove*, to have been distinctly seen.

The court being advised of the possibility of explanation of contradictions and of the availability of this testimony, the interests of justice require that the order for further proof should be allowed. Even more insistent is the fact that the very form of the depositions has made them inconclusive.

There Has Been no Culpable Delay.

The decisions cited show that the practice of the court in regard to granting further proof has been one of liberality in furtherance of justice. It has no analogy to the practice in motions for new trials at common law and must not be approached with that in mind.

Why were these depositions not taken before the decree? The responsibility for this is primarily with the captain of the *Indiana* now appearing here on behalf of his officers and men; no one else could take his position in that respect. In his affidavit he makes a full and completely satisfactory explanation of this point, saying that his professional duties kept him closely occupied; that he supposed there was no question in regard to the right of the *Indiana;* that he believed his interests would be cared for by the U. S. District Attorney.

But the ultimate responsibility must rest upon the Navy Department. A circular (No. 89) of that Department is as follows:

"Circular No. 89. NAVY DEPARTMENT,

"WASHINGTON, D. C., *September 10, 1898.*

"Commanding officers are directed to notify all persons under their command that any persons entitled to prize money, bounty, back pay, etc., will have their claims promptly settled by applying directly to the Auditor for the Navy Department, through the Navy Department,

and that the employment of an attorney is entirely unnecessary.

"This Department is informed by the Treasury Department that large numbers of claims are being presented by attorneys in the names of the persons interested. This employment of an attorney does not advance the interests of the claimant in the slightest degree.

"JOHN D. LONG,
"*Secretary.*"

A naval officer is unused to legal procedure and is used to military discipline and subordination. The commanding officer of the *Indiana* was justified in accepting this circular of the Navy Department and in relying on it. It relieved him of his responsibility for looking after the *Indiana's* interest in the prize and placed that responsibility upon the Secretary of the Navy. The Secretary's purpose of benevolence resulted in a failure to present the case of the *Indiana* to the District Court as fully as should have been done. The *Mangrove* actively contending has secured the complete presentation of its case.

It must be remembered also that the relation of the commanding officer of a vessel to the officers and men whom he represents in court in such a proceeding is not the same as that of an attorney and client. The attorney is selected by the client and the client is generally responsible for his acts. Here the commanding officer represents the others interested by the operation of law and official regulation. They should not answer for errors in procedure, if any occurred, when these can be corrected without violation of settled rules.

Conclusion.

It is submitted that the precedents of this court in the time of Chief Justice Marshall fully justify the granting of the motion for further proof.

GEORGE A. & WILLIAM B. KING,
Attorneys for the Indiana.

IV. PROOF OF SERVICE OF MOTION.

IN THE SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES, Appellant, *v.* THE OFFICERS AND CREW OF THE U. S. S. *Mangrove.*	No. 380.
THE OFFICERS AND CREW OF THE U. S. S. *New York*, THE U. S. S. *Indiana* AND THE U. S. S. *Wilmington*, Appellants, *v.* THE OFFICERS AND CREW OF THE U. S. S. *Mangrove.*	No. 433.

To JEFFERSON B. BROWNE,

Attorney for Appellees in the Above-Entitled Causes.

SIR: You will please take notice that we have filed in the above-entitled causes the motion for leave to take further proof, with affidavits and brief in support of said motion which are attached hereto; and that said motion shall be submitted to the court on Monday, the first day of April, 1901, at the hour of twelve o'clock meridian, or as soon thereafter as the same can be heard.

GEORGE A. & WILLIAM B. KING,
Attorneys for Rear-Admiral Henry C. Taylor, Commanding Officer of the U. S. S. Indiana.

Affidavit of Service.

DISTRICT OF COLUMBIA, ss:

William E. Harvey, being duly sworn, deposes and says: That he is an attorney of this court; that on the 9th day of March, 1901, he served a copy of the foregoing notice, to which was attached a copy of the motion,

affidavits and brief therein referred to, by depositing the same in the Post Office at Washington, D. C., by registered mail, the same being addressed to Jefferson B. Browne, attorney for appellees, at Key West, Florida, which this affiant believes to be his post office address; that the registered receipt therefore is attached to this affidavit and made a part hereof.

WILLIAM E. HARVEY.

Sworn to and subscribed before me this 9th day of March, 1901. MARTHA M. BECK,

[SEAL.] *Notary Public.*

[Registry receipt attached.]

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "NEW YORK," "INDIANA," AND "WILMINGTON," APPELLANTS, *v.* THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "MANGROVE."	*No.* 445.

MOTION FOR LEAVE TO TAKE FURTHER PROOFS.

Now comes French E. Chadwick, captain, U. S. Navy, in his own behalf and in behalf of certain appellants herein, namely, the officers and enlisted men who served under him on board the U. S. F. S. "*New York*" on or about April 25, 1898, and moves the Court,

I.

To grant to the parties hereto leave to adduce further proof on the following questions of fact which are at issue in the cause.

1st. Whether the U. S. F. S. "*New York*" participated in the capture of the Spanish steamship "*Panama*" on April 25, 1898?

2d. Whether the U. S. F. S. "*New York*" was at the time of the said capture within signal distance of the U. S. S. "*Mangrove*" or any other vessel or vessels of the United States Navy which took part therein, under such circumstances as to be able to render effective aid if required.

II.

To issue a commission for the purpose of taking the said proofs.

The appellants show that by reason of the exigencies of the naval service they were prevented from adducing full and adequate proofs while the cause was pending before the Prize Commissioners and the District Court of the United States for the Southern District of Florida, in this cause, and that their rights involved in this appeal cannot be properly submitted to the court upon the present record or without further proof upon the material questions of fact above mentioned. In support of this motion the appellants submit the affidavit of French E. Chadwick, captain, U. S. Navy, and pray that this may be considered by the Court in reaching its decision hereon.

JOS. K. McCAMMON,

JAMES H. HAYDEN,

Of Counsel for the Officers and Enlisted Men of the U. S. F. S. "New York," Appellants.

Affidavit in Support of the Motion.

STATE OF RHODE ISLAND, }
City and County of Newport, } ss.:

French E. Chadwick, being duly sworn, deposes and says that he is a captain of the United States Navy, and on April 25, 1898, and at other times during the late war between the United States and Spain, was the commanding officer of the U. S. F. S. *New York*. That about half past five o'clock on the afternoon of April 25, 1898, while the *New York* and other vessels of the North Atlantic fleet, under the command of Rear-Admiral W. T. Sampson, U. S. N., was off Havana, Cuba, blockading that port, the affiant was informed by the officer of the deck that there was a strange steamer to the northeastward. She proved to be the Spanish steamer *Panama* bound from New York to Havana. Thereupon the affiant went up on the after bridge, which was the signal bridge of the *New York*, and looked at the strange steamer through the glass, then informed the Admiral of her approach and proposed standing for her. At this time the U. S. S. *Indiana* was coming toward the *New York* from the direction in which this steamer had been reported; that is to say, from the northeast, and was quite near the *New York*, probably one-half or three-quarters of a mile distant. That the *New York* signalled the *Indiana* asking the character of the vessel. Several signals were exchanged between the *New York* and the *Indiana*, all of which are correctly given in Ensign Mustin's affidavit. The *Indiana* turned around and started at full speed in the strange vessel's direction. Just at this time there was a steamer seen coming out of the port of Havana. The *Indiana* had turned and was proceeding rapidly toward

the strange steamer, and when some distance in her direction, the *Mangrove* was seen to approach the stranger and lay by her at so short a distance from her that there could be no doubt that the two had communicated with one another. This being the case, and the *Indiana* being already so near the *Panama*, the Admiral ordered the *New York* to speak the steamer which had been seen to be coming out of Havana. Thereupon the *New York* stood to the westward. The sun at this time was just about going down. The steamer standing out of Havana was brought to after sunset and found to be a British vessel, bound for Bermuda loaded with refugees. After sending an officer on board, which occupied some time, the steamer was allowed to proceed. Some little time afterwards the *Panama* came within hail of the *New York*, and the officer aboard reported her capture. The *New York* took no part in the actual seizure of the prize, because she had already directed the *Indiana* towards the *Panama* and had noticed the presence of the *Mangrove*. If this had not been the case the *New York* would certainly have effected the seizure herself. The *New York* was undoubtedly in a position to render effective aid in the capture, had it been required. The position of the *Indiana* made any movement on the part of the flagship unnecessary. The *New York* was provided with a large glass mounted on a tripod upon the after bridge. By means of this the affiant was able to make out every detail of the *Panama* for some time before her capture, and as far as her rigging and general character were concerned. The affiant was also able to observe all of the movements of the *Panama*, the *Indiana*, and the *Mangrove*, but could not make out the colors of the *Panama*, because there was very little wind at the time, and such as there was blew from the *Panama* towards the *New York;* so that the

Panama's colors may have been end on. The affiant estimates the distance of the *New York* from the *Panama* and the *Mangrove*, at the time of the capture of the former, at not under 7 miles and not over 10 miles. The affiant could have read the signals at this distance had the wind been such as to blow the signal flags in a direction normal to the line of sight. The question of signal distance is one which is so complicated by varying circumstances that it is impossible to lay down any rule with regard to it. The direction of the wind or the absence of the wind, and the direction of the sun, may render signals unreadable at an extremely short distance, even as little as a half mile.

That to the best of the affiant's recollection and belief there never was any opportunity for officers of the *New York* to appear before prize commissioners. The first call of the *New York* at Key West, after April 25, 1898, was made for the purpose of coaling in order that she might start at once, with a squadron for Porto Rico; that she did not then remain in the harbor of Key West, but was obliged to lie off the reef; that on May 18, 1898, she called at Key West, but every one was busy attending to the coaling of the ship and the organization of a squadron for operations, on the northern and southern coasts of Cuba, intended to head off the Spanish fleet, under the command of Admiral Cervera. The affiant further says that it is impossible that the *Indiana* could have been over six miles distant from the *Mangrove* when the latter approached the *Panama*, and that in his opinion as a naval officer, under no circumstances should the *Indiana*, at least, be excluded from participation in the prize. He is of the opinion that but for the proximity of the heavier and faster ships, the capture would not have been made. He regards this proximity as the cause of

the *Panama's* yielding as she did, as it is hardly conceivable that the *Panama* would not have made an effort to escape from a vessel of so low speed as the *Mangrove*, which, to the best of the affiant's recollection, steamed but eight knots, as a rule, and at the most, nine. As the *Panama* made an average of ten knots on her voyage from New York to the point of capture, as shown by the time of departure and the time of capture, and this for a part of the distance against the strong current of the Gulf stream, she must have been capable of steaming at least eleven knots under conditions of smooth sea and good weather, such as existed at the time of her capture. She thus, in the affiant's opinion, could have easily escaped had the *Mangrove* been the solo vessel at hand.

FRENCH E. CHADWICK.

Sworn to and subscribed before me this 7th day of January, 1901.

[SEAL.] WILLIAM J. COZZENS,
Notary Public.

Notice of Motion.

To JEFFERSON B. BROWNE, Esq.,
Of Counsel for the Appellees:

Take notice that on Monday, April 1, 1901, at the opening of court, or as soon thereafter as counsel can be heard, the foregoing motion will be submitted to the Supreme Court of the United States for the decision of said court thereon.

Annexed hereto is a copy of the affidavit of French E.

Chadwick, U. S. N., and a brief of argument, to be submitted with the said motion in support thereof.

JOS. K. McCAMMON,
JAMES H. HAYDEN,
Of Counsel for the Officers and Enlisted Men of the U. S. F. S. "New York," Appellants.

Proof of Service.

DISTRICT OF COLUMBIA, *ss:*

Geo. W. Dalzell, being duly sworn, deposes and says: That he is above the age of twenty-one years; that on the 8th day of March, 1901, he deposited in the United States mail copies of the foregoing motion, copies of the affidavit and the brief hereunto annexed, in a sealed wrapper duly postpaid, and directed to Jefferson B. Browne, Esquire, of counsel for the appellees, at Key West, Florida.

GEO. W. DALZELL.

Subscribed and sworn to before me this 8th day of March, 1901.

[SEAL.]

L. M. FOX,
Notary Public.

BRIEF IN SUPPORT OF MOTION.

STATEMENT OF THE CASE.

This appeal runs from the decree of distribution entered by the District Court of the United States for the Southern District of Florida, in the case of the United States of America *v.* The Steamship "*Panama*" (p. 59).

The "*Panama*" was a Spanish merchant vessel, and one of the prizes captured during the late war between the United States and Spain. The cause has already been before this Court upon the claimant's appeal from the decree of condemnation, entered by the District Court on May 27, 1898 (p. 18). The decree of condemnation was affirmed on February 20, 1900 (176 *U. S.*, 535–550).

The question at issue on the present appeal is this: Was the U. S. S. "*Mangrove*" the sole captor of the "*Panama*" and entitled to all of the prize money awarded in the case? Or, did the U. S. F. S. "*New York*" and the U. S. S. "*Indiana*" and "*Wilmington*" either participate in the capture, or were they within signal distance of the "*Mangrove*" at the time, and therefore entitled to share in the prize money? (*R. S. U. S. sec.* 4632).

The record, so far as it is pertinent to the present controversy, shows the following state of facts:

The "*Panama*" was captured about twenty miles to the northward of Havana, on the afternoon of April 25, 1898. She was a Spanish mail steamer bound from New York to Havana, and was capable of making about twelve knots an hour. In accordance with her contract with the Spanish Government for this transportation of the mails, she was armed with two breach-loading rifles of 14 cm. calibre, one Maxim automatic gun, and one small yacht gun (p. 20). At the time of the capture, a fleet of armed vessels of the United States Navy consisting, among others, of the U. S. F. S. "*New York*," U. S. S. "*Indiana*," and U. S. S. "*Wilmington*," were lying off Havana, engaged in the blockade of that port. The U. S. S. "*Mangrove*," formerly a light-house tender, was present also. The fleet was under the command of Rear-Admiral W. T. Sampson, U. S. N. All four vessels were under way. The "*New York*," "*Indiana*" and "*Wilmington*" were

steaming to and fro off Havana harbor. About 4.30 o'clock P. M. the "*Mangrove*" having taken on board the mails of the fleet, proceeded toward Key West, at the rate of about eight knots an hour (pp. 34, 56). About an hour later she sighted a strange steamer, which proved to be the "*Panama*," and made for her (p. 24). In about half an hour, the two vessels were close together. From the time when she was first sighted, and throughout the chase, the "*Panama*" held her course southward toward Havana, constantly approaching the "*Mangrove*" and the vessels on the blockade. The "*Panama*" surrendered to the "*Mangrove*" about ten minutes past six. At the moment of capture the "*Panama's*" course was changed to the eastward; but this was not followed for any length of time and had no effect upon her position with respect to the "*New York*," "*Indiana*" and "*Wilmington*." After the capture, an ensign from the "*Mangrove*" was put in charge of the "*Panama*" as prize master with a prize crew drawn from the "*Mangrove*" and "*Indiana*." The "*Mangrove*" then reported to the Admiral and proceeded directly to Key West with the prize.

On April 26, 1898, the commanding officer of the "*Mangrove*" made claim to the prize on behalf of his officers and men. He stated that the capture was made by his vessel alone and that no other vessel of the Navy was then within signal distance of her (pp. 19–20). Similar statements are contained in the report of the prize master (p. 20). Eleven depositions were taken on behalf of the "*Mangrove*" (pp. 21 to 35). These were given during the middle or latter part of May, 1898. Nine of them were verified before the commanding officer of the "*Mangrove*." Two were given before the prize commissioner at Key West. The deponents included the commanding officer of the "*Mangrove*," the ensign who acted as prize master, a naval

cadet, two mates, a boatswain's mate, a quartermaster, an apothecary, a coxswain, a gunner's mate, and an ordinary seaman. All of them declare that no vessel of the Navy assisted the "*Mangrove*" in making the capture, and that there was none within signal distance of her when the "*Panama*" was taken.

On May 21, 1898, Captain F. E. Chadwick, U. S. N., the commanding officer of the "*New York*," on behalf of his officers and men, made claim for a share of the prize money (pp. 48–49). In this it is stated that the capture was made by the "*Mangrove*," assisted by the "*Indiana*," and that the "*New York*" was within signal distance of both and in condition to render them effective aid, if required; that prior to the capture, the rig and smoke-pipe of the "*Panama*" could readily be seen from the "*New York*"; that shortly before the capture, signals were exchanged between the "*New York*" and "*Indiana*"; that the entire chase was seen from the "*New York*," and that she stood ready to take part in it and would have done so had the "*Mangrove*" and "*Indiana*" required assistance. Two depositions were taken on behalf of the "*New York*" during the latter part of May, 1898 (pp. 51–52, 69–70), both deponents being naval cadets. They relate the circumstances of the chase and capture, stating that the "*Mangrove*" was assisted by the "*Indiana*," and that the "*New York*" was within signal distance of both vessels, under circumstances which made her capable of rendering effective aid in the capture had it been required.

On April 26, 1898, Captain H. C. Taylor, U. S. A., the commanding officer of the "*Indiana*" made claim for a share of the prize (p. 35). This states that the "*Indiana*" made for the "*Panama*" some time before she was taken, and was close upon her when she surrendered; that the "*Indiana*" participated in the capture and was within

easy signal distance of the "*Mangrove;*" that she had communicated with the "*New York,*" by signal, about six o'clock, or a few minutes prior to the capture; and that part of the prize crew was taken from the "*Indiana.*" Appended to the claim is an extract from the "*Indiana's*" log for the watch from 4 to 8 o'clock P. M., on April 25, 1898, wherein all the foregoing facts appear (pp. 35–37). Four depositions were taken on behalf of the "*Indiana.*" The deponents were: The chaplain; a lieutenant of the Navy; a first lieutenant of the marine corps, and a chief yeoman. The depositions are very clear and explicit, especially that of the chaplain and chief yeoman, who were on board the "*Mangrove*" at the time and had ample opportunity to observe the circumstances of the capture and to note the close proximity of the "*Indiana*" to the "*Mangrove*" and the "*Panama*" (pp. 37–43).

On June 1, 1898, a claim for a share of the prize was presented to the prize court by Commander C. C. Todd, U. S. N., the commanding officer of the "*Wilmington*" (p. 44). Three depositions were taken on behalf of that vessel. The deponents were: Commander Todd, a lieutenant-commander of the Navy; a lieutenant, and an ensign (pp. 45–48). They declare that the "*Wilmington*" was within signal distance of the "*Mangrove*" at the time of the seizure, and that by preventing the escape of the prize she participated in the capture (pp. 45–48).

In his report to the court the prize commissioner found that the "*Mangrove*" was the sole captor, and that no other vessel of the Navy was within signal distance of her at the time of the capture (p. 52). His report does not set forth any ground for this finding.

The cause was heard by the District Court upon the foregoing record. The district attorney and counsel for the "*Mangrove*" took part in the argument. Adequate

notice of the hearing was not given to the representatives of the "*New York*," "*Indiana*," and "*Wilmington*." On June 15, 1900, the decree of distribution was entered. The court dismissed the claims of the "*New York*," "*Indiana*," and "*Wilmington*"; and found that the "*Mangrove*" was the sole captor, and that she was inferior in force to the "*Panama*." Therefore, the entire proceeds of the prize were decreed to the "*Mangrove's*" officers and men (p. 59). An appeal was taken on behalf of the United States (p. 60). Thereafter this appeal was taken and perfected on behalf of the "*New York*," "*Indiana*," and "*Wilmington*" (pp. 62–64).

ARGUMENT.

The depositions of the nine officers taken on behalf of the "*New York*," "*Indiana*," and "*Wilmington*," and the logs of these vessels for the watch during which the "*Panama*" was captured, are in substantial accord and all are in direct conflict with the eleven depositions of the "*Mangrove's*" officers and men. The court below accepted the "*Mangrove's*" evidence as true and rejected of all of the evidence offered by the other vessels as untrue.

A remarkable discrepancy occurs in the depositions of officers and men who witnessed the capture from the "*Mangrove's*" decks. Chaplain Cassard and Chief Yeoman Murray of the "*Indiana*," who were temporarily absent from their ship and on board the "*Mangrove*," declare positively that the "*Indiana*" was not only within signal distance of the "*Mangrove*," but that the prize was actually within range of her guns (pp. 38–39; 42–43). This would make the "*Indiana*" an actual participant in the capture. On the other hand, the "*Mangrove's*" witnesses declare that they

scanned the horizon with glasses and could only see smoke to the southward. This conflict of evidence brings to mind an ancient saying of admiralty courts, to the effect that every sailor will swear by his ship. Among officers of the navy, however, a higher standard of veracity is to be expected and undoubtedly prevails. The conflict may be explained, in part, by the excitement attending the capture, but there can be no doubt that the main reason of the difficulty lies in the hasty and informal manner in which all of the depositions were taken. The standing interrogatories upon which they were taken are relics of the days of sailing ships and smooth-bore guns. It is not surprising that they should have failed to draw from the witnesses full and complete statements of all the circumstances attending the capture. It cannot be doubted that many of the answers would have been modified and the present uncertainty eliminated from the record if the witnesses had been produced in the manner usual in other causes of admiralty jurisdiction, and had been properly examined and cross-examined.

By the present motion we ask that all parties to this appeal have leave to adduce further proofs to be taken under a commission issued by this court. The affidavit of Captain Chadwick, appended to this motion, and the affidavits of several officers which will be presented to the court, along with a similar motion on behalf of the "*Indiana*," show that officers who, from actual observation, are well qualified to testify, were not produced as witnesses, and that they can give clear and explicit testimony with regard to all of the circumstances under which the capture was made. This evidence would establish the validity of the appellants' claims.

The officers and men of the "*New York*," "*Indiana*," and "*Wilmington*" were not guilty of laches in failing to present

to the prize commissioner depositions of the witnesses whom we now wish to examine. From April 25, 1898, until the close of the war, the "*New York*" and "*Indiana*" were constantly engaged upon the important work of an extensive naval campaign. Their calls at Key West were few in number and brief in duration. At these times their officers and men were always occupied in the coaling of their ships, the securing of supplies, or similar matters demanding immediate attention. The situation of the "*Mangrove*" was very different. She was of little or no value as a fighting ship. She made frequent runs between Havana and Key West, conveying the mails and dispatches of the blockading fleet. When at Key West her officers had ample time to consult counsel and the officials of the prize court, and even when at sea had ample leisure to prepare their depositions with care and deliberation.

It cannot be denied that the proofs which the appellants ask leave to offer, and such further proof as the appellees may see fit to present, will be calculated to remove doubt and give the court a correct knowledge of the facts. It would give the "*New York*," "*Indiana*," and "*Wilmington*" an adequate opportunity to support their claims, which, thus far, they have not had. It would remove the possibility of an unfair distribution of the prize money.

The taking of further proofs would not delay the determination of the case, for it cannot be reached for argument until the next term of this court. Under such circumstances an order for further proofs would be in accordance with the practice of this court, followed in cases where, without fault of the parties concerned, the record discloses a conflict of evidence or a doubt with regard to some material fact.

The "*George*," 1 Wheaton, 408, 409–412.

The "*London Packet*," 2 Wheaton, 372, 373.
The "*Atlanta*," 3 Wheaton, 409, 415–433.
The "*Grotius*," 8 Cranch, 456, 460–462.
The "*Frances*," 8 Cranch, 348, 354.
The "*Adeline*," 9 Cranch, 244, 283–289.
Fry *v.* U. S., 3 Wall, 451.

Necessity for a prompt adjudication and other reasons, which have impelled prize courts to exercise extreme caution, in allowing an enemy or hostile claimant to take further proofs, does not apply to a cause like the one at bar, where condemnation has been decreed, and it only remains for the court to make a just distribution of the proceeds of the prize.

JOS. K. McCAMMON,
JAMES H. HAYDEN,
Of Counsel for the Officers and Enlisted Men of the U. S. F. S. "New York."

IN THE

Supreme Court of the United States.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "NEW YORK," "INDIANA," AND "WILMINGTON," APPELLANTS, *v.* THE OFFICERS AND ENLISTED MEN OF THE U. S. S. "MANGROVE."	*No.* 445.

Reply Brief for the Appellants on the Motions for Leave to take Further Proof.

The brief for the appellees, in opposition to these motions, contains certain allegations, which are intended to show that the appellants were guilty of laches in failing to adduce all of their proofs in the prize court. We wish to correct certain misstatements of fact and show that the appellants have been as vigilant as the circumstances permitted.

The affidavits and briefs for the appellants submitted in support of these motions, among other things, show: that after the capture of the "*Panama*," throughout the period during which the proofs were taken by prize commissioners and until the end of the war between the United

States and Spain, the duties assigned to the U. S. F. S. "*New York*" and U. S. S. "*Indiana*" and "*Wilmington*," prevented them from calling at Key West, except on one or two occasions when they remained only long enough to obtain coal and other necessary supplies, and by reason of that fact, and because the officers and men of these three vessels were occupied continuously by duties of immediate importance, during their calls at Key West, and at all other times, they did not have an adequate opportunity to give depositions in support of their claims for a share of the prize money arising from the capture of the "*Panama*." It is stated, likewise, that neither the appellants nor their representatives had an adequate opportunity to inspect the record in the cause prior to the hearing in the prize court for purposes of distribution, and had not adequate notice of that hearing.

In the brief for the appellees, submitted by Messrs. Herbert & Micou, an attempt is made to show that the appellants, or their counsel, had ample opportunity to offer further proofs and to be heard in the cause, and actually were heard.

Inasmuch as the affidavits and fragments of correspondence appended to the appellees' brief might lead to a false impression, we feel constrained to describe at length the successive steps taken in the case and the transactions of all parties thereto.

By decree of the prize court, the "*Panama*" was condemned. On the appeal of the claimant, the decree of condemnation was affirmed by this court on February 26, 1900. The record on that appeal did not contain the claims for prize money presented by the "*New York*," "*Indiana*," "*Wilmington*," and "*Mangrove*," or the evidence in support of the claims, which now appears on pages 19 to 70 of the present record. Prior to the

affirmance of the decree of condemnation, no question affecting the distribution of prize money had been or could have been raised. After the decision was rendered by this court, counsel for the appellants endeavored to learn when the case of the "*Panama*" and other cases in which decrees of condemnation had been entered, would be reached for hearing on the question of distribution. Correspondence relating to this subject was carried on with the clerk of the District Court for the Southern District of Florida and the United States District Attorney. It developed that no regular calendar was kept of the pending prize cases, and that they were called up from time to time on motion or pursuant to agreements of counsel. All letters relating to the case of the "*Panama*," other than the two appended to the appellees' brief, are set out in the affidavit of James H. Hayden, hereunto annexed. From the letters and affidavit it appears that on April 23, 1900, counsel for the "*Mangrove*" directed a notice to counsel for the "*New York*," "*Indiana*" and "*Wilmington*," saying that he proposed to call up the case for distribution on May 8, 1900. The notice was received on April 28th. On account of professional engagements in Washington, and with the hope of avoiding repeated trips to Florida, counsel for the "*New York*" sought to have the proposed hearing postponed for a short time in order that arrangements might be made to call up successively for hearing the cases of the "*Panama*," "*Pedro*," "*Guido*," "*Paquette Habana*," and "*Benito Estenger*," all of which were then pending in the District Court for the Southern District of Florida awaiting either decrees of distribution or decrees fixing the responsibility for costs and damages. The postponement desired was not granted. On May 8, 1900, the case of the "*Panama*" was argued and submitted by

the United States District Attorney and counsel for the "*Mangrove.*" Counsel for the "*New York*," *Indiana*," and "*Wilmington*," were allowed five days in which to file briefs. Being unable to examine the record in that short period they were obliged to rely upon the depositions of the captured crew taken *in preparatorio*, and such information as they were able to gain from records of the Navy Department. On or about June 7, 1900, James H. Hayden, of counsel for the captors in the cases of the "*Pedro*," "*Guido*," "*Carlos F. Roses*," "*Paquette Habana*," and "*Benito Estenger*," appeared before the district court and was heard therein. In an informal interview with the judge of the district court, which did not occur in court, the latter stated that he had under consideration the case of the "*Panama*," which had been argued on the 8th of May, and expected to render his decision within a few days. No discussion of the case ensued, and we submit that under the circumstances any argument would have been ill-timed and improper.

We submit that because of the informal manner in which this and other prize cases were conducted and called up for hearing in the prize court the appellants are not chargeable with laches, and that Messrs. Herbert & Micou, for the appellees, have shown no cause why the appellants should not be given an opportunity to clear away from the record the uncertainties caused by the contradictory evidence given by witnesses, whose standing in the United States Navy entitles their sworn statements to consideration. The motions ask that leave to take further proof be granted to *all* parties. If allowed it could not work injustice to anyone.

JOS. K. McCAMMON,
JAMES H. HAYDEN,
Of Counsel for the Officers and
Enlisted Men of the U. S. F. S. "New York."

DISTRICT OF COLUMBIA, *ss:*

James H. Hayden, being duly sworn, deposes and says: That he is of counsel for the appellants in the above-entitled cause; that the letters hereunto annexed were directed by him, in the name of the firm of McCammon & Hayden, of which he is a member, to the Hon. J. N. Stripling, the United States District Attorney for the Southern District of Florida, E. O. Locke, Esq., Clerk of the District Court of the United States for the Southern District of Florida, and Jefferson B. Browne, Esq., of counsel for the "*Mangrove*," or were received by the affiant's firm from one of the said persons; that the facts stated in the said letters of the firm of McCammon & Hayden are true; that the notice of the said Browne stating that he proposed to call up the case of the "*Panama*" for purposes of distribution was received on April 28, 1900; that by reason of professional engagements in Washington, D. C., the affiant who had charge of the case was unable to be present at the hearing of the same for purposes of distribution which was held in Jacksonville on May 8, 1900, and was never heard in the said cause and never argued the case before or discussed the same with the Hon. James W. Locke, Judge of the District Court of the United States for the Southern District of Florida.

JAMES H. HAYDEN.

Subscribed and sworn to before me this 3d day of April, 1901.

[SEAL.]

PAUL E. SLEMAN,
Notary Public.

CORRESPONDENCE.

APRIL 30, 1900.

DEAR SIR:

We have received a notice from Jefferson B. Browne, Esq., of Key West, in which he advises us that he represents the U. S. S. "*Mangrove*" in the case of the "*Panama*" (Prize), and that he will call up this case for distribution on May 8th. To-day we have seen Capt. Chadwick, late commanding officer of the "*New York*." He advises us that at or about the time of the capture he prepared a claim on behalf of his vessel for a share of the prize money, in which he mentioned the fact that the U. S. "*Indiana*" and "*Mangrove*" were also entitled to a share therein. He does not remember, and has no record to show, whether this claim was forwarded to the Navy Department, the Auditor, or to the Prize Commissioners. Can you advise us what claims or proofs affecting the question of distribution there are on file in the case?

We may be obliged to ask Mr. Browne to postpone the hearing in order that proofs may be made on behalf of the "*New York*" and "*Indiana*." If there is nothing of this kind on file except the petition of Capt. Chadwick (March 23) will you kindly advise us by telegram at our expense.

Very truly yours,

McCAMMON & HAYDEN.

E. O. LOCKE, Esq.,
Clerk of Dist. Court, U. S. Jacksonville, Fla.

THE WESTERN UNION TELEGRAPH COMPANY.

Received at Wyatt Bldg., 14th & F Streets, Wash., D. C., May 2, 1900. Dated Jacksonville, Fla.

To McCammon & Hayden, 1420 F Street, Wash., D. C.

Depositions were filed in 1898 in case "*Panama*" by "*Mangrove*," "*Wilmington*," "*Indiana*," and "*New York*."

E. O. LOCKE,
Clerk Court.

MAY 3, 1900.

DEAR SIR:

Important engagements here will prevent our going to Jacksonville before the 8th instant, and if the hearing were to be held on that day, we should have no opportunity to examine the depositions in behalf of the "*Mangrove*," "*New York*," "*Indiana*," and "*Wilmington*," which are on file in the case of the "*Panama*."

We therefore ask you to agree to a postponement of say from ten days to two weeks. You will appreciate that the trip from Washington to Florida is too long a one to be repeated frequently. We are endeavoring to arrange to have several other cases heard about the 20th of May. It would be a great convenience if that of the "*Panama*" could be heard at the same time.

We trust that this change would not cause you inconvenience, and if you can grant it shall be greatly obliged to you.

Very truly yours,

McCAMMON & HAYDEN.

To JEFFERSON B. BROWNE, Esq.,
Counsellor at Law,
Key West, Fla.

MAY 3, 1900.

DEAR SIR:

Engagements in Washington make it practically impossible for us to attend the proposed hearing in the "*Panama*" on May 8th.

We hoped, through our clients, to get copies or at least the substance of depositions given by them, and thus be able to submit the case in brief. This we have found impossible, and hence are anxious to have the hearing in the "*Panama*" postponed until the cases of the cargoes of the "*Pedro*" and "*Guido*" can be heard.

We have written to the Honorable J. N. Stripling with regard to the latter cases, and hope that they may be set for some time about the 20th instant. We have written to Jefferson B. Browne, Esq., counsel for the "*Mangrove*" in the "*Panama*," asking him to grant a postponement of from ten days to two weeks. To this request we hope he will accede, and trust that the court can arrange to hear the cases about the same time, so that we may dispose of them without making two trips to Florida.

Very truly yours,

McCAMMON & HAYDEN.

To E. O. LOCKE, Esq.,
Clerk District Court of the United States,
Southern District of Florida,
Jacksonville, Florida.

EUGENE O. LOCKE,
Clerk U. S. Circuit and District
Court, Southern District of Florida.

JACKSONVILLE, FLA., *May 5th*, 1900.

Messrs. McCAMMON & HAYDEN,
Washington, D. C.

GENTLEMEN: I am in receipt of your letter of the 3d,

speaking of postponement of hearing on question of distribution in case "*Panama*," and I am at a loss to understand what you mean when you speak of postponing same until "the cases of the cargoes of the '*Pedro*' and '*Guido*' can be heard."

There are no such cargo cases pending; they have all been heard and determined.

I have also received the testimony of Ludlow & Rogers, taken in case of "*Ambrosio Bolivar*," Ludlow, McRea, and Garst, in case of "*Guido*," and Chadwick in "*Carlos F. Roses*," taken in Washington.

Respectfully,

E. O. LOCKE,
Clerk.

MAY, 5, 1900.

DEAR SIR:

Some days ago we received a notice from Jefferson B. Browne, Esq., representing the officers and enlisted men of the U. S. S. "*Mangrove*," by which he announced that he would call up the case of the "*Panama*" for distribution on the 8th instant. We find that it will not be possible for us to be present in Jacksonville at that time, and have written to Mr. Brown asking him to have the hearing postponed. Inasmuch as the "*Pedro*," "*Guido*," and other cases are likely to be called up before long, we hope that the "*Panama*" may be heard at the same time. Possibly the court will consider it desirable to take up the pending prize cases and dispose of them as far as possible, one after another. This, you will appreciate, would be a great accommodation to counsel who are interested in a number of cases and who reside at considerable distance from Jacksonville.

We gather from Mr. Browne's letter that he intends to argue that the "*Panama*" was captured by the "*Man-*

grove" alone and constituted a superior force. He suggests that, although the "*New York*" and "*Indiana*" may have been within signal distance of the "*Mangrove*" when the capture was made, and hence entitled to share in the prize money, the fact that they did not actually participate in the capture should exclude them from consideration in determining the strength of the capturing force. While we should be very glad to have all of the net proceeds distributed among the captors, we think that the law on this subject was conclusively settled in the case of the "*Atlanta*" (3 Wall., pp. 425–434). The "*New York*," "*Indiana*," and "*Wilmington*" having been within signal distance of the "*Mangrove*," are entitled to share in the prize and must be treated as part of the capturing force.

If the hearing cannot be postponed, will you kindly ask the court to grant us leave to file a brief in behalf of the "*New York*" within say ten days or two weeks?

Very truly yours,

McCAMMON & HAYDEN.

To Hon. J. N. STRIPLING,
U. S. District Attorney,
Jacksonville, Florida.

WESTERN UNION TELEGRAPH COMPANY.

Received at Wyatt Bldg., 14th & F Streets, Washington, D. C. Dated Jacksonville, Fla., May 7, 1900.

To McCammon & Hayden, Washington, D. C.

Court will give you five days to file brief in "*Panama*" case.

STRIPLING,
U. S. Atty.

MAY 9, 1900.

DEAR SIR:

We send you herewith our brief in behalf of the officers and enlisted men of the U. S. S. "*New York*," in the matter of the distribution of prize money in the case of the "*Panama*." The court granted us leave to file this brief within five days of the date of hearing (8th instant). Kindly file the brief and present it to the court.

We have sent a copy to Jefferson B. Browne, Esq., counsel for the "*Mangrove*."

Very truly yours,

McCAMMON & HAYDEN.

To E. O. LOCKE, Esq.,
Clerk District Court for the
Southern District of Florida,
Jacksonville, Florida.

MAY 9, 1900.

DEAR SIR:

Please accept our thanks for your letter of the 7th instant with regard to the "*Panama*."

We agree with you that there should not be the slightest doubt that the "*New York*," "*Indiana*," "*Mangrove*," and "*Wilmington*," will be awarded a moiety of the prize fund, but having prepared a brief send it in for what it is worth. Our work was done at some disadvantage, because we only had the logs of the vessels and official correspondence relating to the capture. We understand that depositions on behalf of each of the vessels were taken before the prize commissioners, and are of record in the case.

We were surprised to learn from E. O. Locke, Esq, clerk

of your court, that the cargo claims in the "*Pedro*" and "*Guido*" had all been disposed of. We understood that the pendency of some of these claims occasioned the delay in making distribution. Prior to receiving Mr. Locke's letter our information was obtained through the Navy Department, where we consulted your last report. If all of the cargo claims have not been disposed of, will you kindly indicate a time when it will be convenient for the court to hear them. We should like to move for condemnation and follow this by motion for distribution.

Very truly yours,

McCAMMON & HAYDEN.

Hon. J. N. STRIPLING,
U. S. District Attorney,
Jacksonville, Florida.

MAY 9, 1901.

DEAR SIR:

We send you herewith a brief in behalf of the "*New York*," in the case of the "*Panama*," which we have presented to the court pursuant to leave granted.

You will note that we do little more than invite the court's attention to two authorities, because our knowledge of the facts was obtained wholly from the log books of the naval vessels concerned and official records. We had no opportunity to examine the depositions filed on behalf of the "*New York*," "*Indiana*," "*Wilmington*," and "*Mangrove*."

Very truly yours,

McCAMMON & HAYDEN.

To JEFFERSON B. BROWNE, Esq.,
Key West, Fla.

MAY 10, 1900

DEAR SIR: We learned for the first time this afternoon that a report had been filed by commissioners appointed in the case of the "*Panama*," wherein they found that the "*Mangrove*" was the sole captor. Herewith we send you an objection and protest against this finding, made on behalf of the "*New York*," "*Indiana*," and "*Wilmington*." Please see that this is filed and presented to Judge Locke, along with the other papers in the case.

Yours, very truly,
McCAMMON & HAYDEN.

E. O. LOCKE, Esq.,
Clerk, U. S. District Court,
Jacksonville, Florida.

(Postal card.)

"*Panama.*"

JACKSONVILLE, FLA., *May* 12, 1900.

Your objections to report of Prize Commissioners have been filed and handed to the judge.

Yours truly,
E. O. LOCKE,
Clerk, U. S. District Court,
Southern District of Florida.

McCAMMON & HAYDEN,
1420 *F Street, Washington, D. C.*

JACKSONVILLE, FLA., *May* 11, 1900.

Messrs. MCCAMMON & HAYDEN,
Washington, D. C.

GENTLEMEN:

Yours of the 9th inst., enclosing your brief in the matter of the U. S. S. *New York*, has been handed to the judge as requested.

Very truly yours,

E. O. LOCKE,
Clerk.

Dictated.



In the Supreme Court of the United States.

OCTOBER TERM, 1900.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 380.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

SUGGESTION ON BEHALF OF THE UNITED STATES UPON MOTION FOR LEAVE TO TAKE FURTHER PROOF.

The United States might well succeed in reversing the decree below on the present record, even if the appellants in No. 433, in which a similar motion is filed upon the same record, should not succeed in their claim to share in the distribution. That is to say, the United States believe that even if the *Mangrove* were the sole capturing vessel, the prize was of inferior force. On the other hand, it is obvious that if the *Indiana*, the *New York*, and the *Wilmington* were within signal distance at the time of capture, and are entitled to share in the proceeds of the prize, the prize was manifestly of inferior force. Although thus far interested with the contesting captors, the United States disclaim any

bias relative to the competing rights. Nevertheless, it seems proper to suggest to the court that at this stage of a prize cause, after the controversy between the claimants and the captors has been settled, it is especially fitting that further proof should be allowed when any fair doubt arises respecting distribution. There is not in this posture of affairs so much reason for scrutiny of motives or suspicion of fraud as when the question is still prize or no prize. That main inquiry, and not the subordinate inquiry regarding distribution, has chiefly dictated the rule that great caution should be observed in allowing an order for further proof because of the temptation to fraud or perjury. In the peculiar circumstances of this case the interrogatories were manifestly inappropriate and elicited little information pertinent to the present subject. There seems no doubt that the delay in moving for further evidence is fully explained and is not open to the charge of negligence.

The purpose and desire of the court in any prize case is to know all of the circumstances so that the real facts and the actual situation of the parties interested may be fully cleared up. From this point of view the interests of justice often require further proof, and when this is the case the court will grant the necessary opportunity. The authorities cited on behalf of the contesting naval captors make it clear, I think, that this application is justified upon principle and is within the rule of instances which are not precise precedents, but illustrate the reason or guide just suggested. Especially do the two cases of the *Frances* (8 Cranch, 348, id.,

354) show that this court's desire is to ascertain the real facts and all the facts, and that an order for further proof will be given with that end in view, and even a second order where the first order has not produced the necessary amount or kind of evidence.

In the case of the *Lydiahead* (2 Acton, 133) further proof was allowed with respect to points about which the court was evidently not satisfied under the original proof. It disclosed a fresh and sufficient ground for condemnation upon which Sir William Scott did not permit the vessel to be impeached. The point suggested is that if under the ordinary circumstances of a prize case, while it still lies between claimants and captors, further proof is allowed with respect to such questions as property and destination which the interrogatories fully cover, much more should it be allowed in a novel situation like the present, for which the interrogatories really do not provide at all. The question of a new ground of condemnation is not involved, because condemnation has already passed and has been affirmed. No new ground of argument will be brought forward, because the argument was made below exactly as it will be made here. The point is that the essential facts relating to distribution were not fully or fairly brought out below.

The English cases in which further proof was allowed do not throw much light upon the particular point here. They are cases in the ordinary stage of proceedings to condemn and do not refer to distribution. Nevertheless, it may be worth while to note a few of the general rules announced.

One of the leading cases is that of the *Magnus* (1 C. Rob., 31), in which Sir William Scott believed that there were plain symptoms of fraud in addition to defects of evidence on the part of the claimants; and yet he hesitated to condemn and evidently would have allowed further proof a second time (after the case had gone to trial by "plea and proof") if there had been any means of obtaining further information (see p. 37).

The point in the *Adriana* (id., 313) was that further proof does not necessarily open the case to both parties. That suggestion of inequality does not exist in the present case, because in the motion in No. 445 on behalf of the officers and men of the *New York*, the prayer is that "all parties to this appeal have leave to adduce further proof to be taken under a commission issued by this court" (p. 13 of brief for *New York* in No. 445).

The *Johanna Emilie* (Spinks, 12, 25) merely refers to the *Magnus* and *Adriana* as authorities on further proof.

The *Otto and Olaf* (id., 257, 263) thus states the court's wide discretion as to the scope or method of further proof:

> It is quite in the power of the court to direct further proof generally or in any shape it thinks fit. On the present occasion it will direct further proof generally and will require to be satisfied, etc.

In the *Panaja Drapaniotisa* (id., 336, 34 1–43) Dr. Lushington states in brief form the general procedure

in prize and the rules as to further proof, and makes the particular point that in any case the court expects counsel to state what is expected to be proved before obtaining an order for further proof, and requires that the further proof offered shall be such as, if proved, will substantiate the claims made. The motions made here are within that test.

"The court is in no case concluded by the original evidence, but may order further proof on a doubt arising from any source or quarter." (Story on Principles, etc., of Prize Courts, p. 24.)

I respectfully suggest on behalf of the United States that the order for further proof may with justice and propriety be allowed under the circumstances of the present case.

HENRY M. HOYT,
Assistant Attorney-General.

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JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 24.

THE UNITED STATES, APPELLANTS,

v.

THE OFFICERS AND CREW OF THE U. S. S. MANGROVE.

No. 34.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. NEW YORK, U. S. S. INDIANA, AND U. S. S. WILMINGTON,

v.

THE OFFICERS AND CREW OF THE U. S. S. MANGROVE.

BRIEF AND ARGUMENT FOR THE OFFICERS AND MEN OF THE U. S. S. INDIANA.

GEORGE A. KING,
WILLIAM B. KING,
Proctors for the U. S. S. Indiana.

ANALYSIS OF ARGUMENT.

		Page.
PART I.	INTRODUCTORY	1
	Statement of the case	1
	Assignment of error	2
	Prior proceedings	2
	The issue	3
	The undisputed facts	4
	The scope of the discussion	6
	The evidence classified	6
PART II.	OBSERVATIONS FROM THE *INDIANA*	7
	The witnesses	7
	The *Indiana* saw the capture	8
	Evidence of signal distance	8
	Detailed evidence	10
	The commanding officer	10
	The signal officer	15
	Other witnesses	21
	What the witnesses saw	24
	Signal distance established	25
	Gun signaling authorized and practicable	30
PART III.	OBSERVATIONS FROM THE *MANGROVE* AND *PANAMA*	33
	The *Mangrove's* evidence	34
	The *Indiana's* evidence on the *Mangrove*	36
	The evidence from the *Panama*	39
	A conflict of evidence	41
	Conclusions of fact	42
	The *Indiana's* evidence not contradicted	42
	Gun signals not affected	42
	The *Indiana's* evidence not impeached	42
	The *Mangrove's* evidence all interested	44
	The *Indiana's* evidence affirmative	46
	The presumption of good faith	48
	The result of the evidence	49
PART IV.	EVIDENCE OF SPEED AND DISTANCE	50
	The questions at issue	50
	The time of approach of the vessels	51
	The rates of speed	53
	The distance at 6.45	57
	The distance as shown by speed calculations	58
	When Dayton saw the *Indiana*	60
	Distance between known heights	62
	The limits of signal distance	63
	Conditions favorable for signaling	65
	Visual distance of objects at sea	67
	The theories of distance tested	68
	Everett's and Dayton's estimate of 16 miles	68
	Speed calculation of 11.36 miles	69
	The *Indiana's* calculation of 7.37 miles	71
PART V.	SOME MINOR OBJECTIONS	72
	The *Panama's* colors	72
	Personal contradictions	76
PART VI.	QUESTIONS OF LAW	77
	Signals from *Mangrove* to *Indiana*	77
	Gun signals	78

In the Supreme Court of the United States.

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THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 24.

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THE OFFICERS AND CREW OF THE U. S. S. "Mangrove." } No. 34.

BRIEF AND ARGUMENT FOR THE OFFICERS AND MEN OF THE U. S. S. "INDIANA."

PART I.

INTRODUCTORY.

STATEMENT OF THE CASE.

These are appeals from the decree of the district court of the United States for the southern district of Florida, distributing the proceeds of prize in the Spanish steamer *Panama*, captured in the Spanish-American war. The decree of condemnation of the vessel was affirmed by this court in the case of *The Panama* (176 U. S., 535).

The U. S. S. *Mangrove* claims to have been the sole captor; other vessels, the *Indiana*, *Wilmington*, and *New York*, claim to share as captors within signal distance

under Revised Statutes, section 4632. The district court rendered its decree in favor of the *Mangrove* as sole captor and, finding that the *Mangrove* was of inferior force to the *Panama*, decreed the whole amount of prize to the *Mangrove*. By Revised Statutes, section 4630, the United States receives one-half the proceeds if the "vessel or vessels making the capture" are equal or superior to the prize. From this decree the *Indiana*, *New York*, and *Wilmington* have appealed on the ground that they are entitled to share. The United States has also appealed on the ground that the capturing force was superior to the *Panama*, contending (1) that one of the other vessels assisted in the capture, making a superior force, and (2) that the *Panama* was itself inferior in force to the *Mangrove* if that vessel alone made the capture.

This brief is presented on behalf of the *Indiana*, but the interests of the United States and of the *Indiana* are identical on the question whether the *Indiana* is entitled to share.

ASSIGNMENT OF ERROR.

For error in the decree and judgment of the court below, these appellants say that the court erred:

I. In finding that the U. S. S. *Indiana* was not within signal distance of the U. S. S. *Mangrove* at the time of the capture.

II. In refusing to include the U. S. S. *Indiana* as a vessel entitled to share in the proceeds of the prize.

PRIOR PROCEEDINGS.

This case has once been before this court on a motion for leave to take further proof on behalf of the ap-

pellants, the record then consisting of 70 pages. On April 15, 1901, the court, on motion of the appellants, authorized further proofs. Depositions have been taken of 19 witnesses for the *Indiana*, 1 for the *New York*, and 14 for the *Mangrove*, and additional documentary evidence has been presented. This is separately printed as "Additional evidence," comprising 269 pages. The original record will be referred to as "rec.;" the additional evidence as "add."

ARGUMENT

THE ISSUE.

The right of the *Indiana* to share in the distribution of this prize money is governed by section 4632 of the Revised Statutes, as follows:

> All vessels of the Navy within signal distance of the vessel or vessels making the capture, under such circumstances and in such condition as to be able to render effective aid if required, shall share in the prize. * * *

The issue between the *Mangrove* and *Indiana* is whether the *Indiana* was "within signal distance of the vessel making the capture."

The learned district judge, in deciding this case, states correctly the nature of this issue as follows (Rec., 53):

> Under our prize law the determination of what vessels are entitled to share in prize money for a capture becomes simply a question of fact. The statute is binding upon the courts, and declares positively that those vessels within signal distance and so situated that they can render assistance if required shall share.

This renders unnecessary any examination of the older British cases on constructive captors. These were very elaborately considered by Sprague, district judge, in *The Cherokee* (5 Fed. Cas., 550; 2 Spr., 235), and the same conclusion reached as stated above in regard to the issue under the statute of the United States.

As a general rule, signal distance will permit the interchange of signals, but conditions may exist where signals may be understood, if made on one vessel, by persons on the other vessel, but not *vice versa*. The test made by this statute is whether the claiming vessel was within signal distance of the capturing vessel; that is, could the capturing vessel signal to the claiming vessel? This is the vital question, and not whether the claiming vessel could signal to the capturing vessel. We claim to have established both conditions here, but the former, the material point, by wholly uncontradicted evidence.

THE UNDISPUTED FACTS.

On April 25, 1898, the *Mangrove*, commanded by Lieut. Commander William H. Everett, and the *Indiana*, commanded by Capt. Henry C. Taylor, were a part of the blockading fleet in the vicinity of Habana. At 4.30 p. m. the *Mangrove* was signaled by the *Indiana* to come within hail. Between that and 5 o'clock the *Mangrove* started with mail from the *Indiana* for Key West. About 5.15 a strange steamer, which turned out to be the Spanish steamer *Panama*, was sighted from the *Indiana*, and shortly before 6 p. m. the

Indiana headed for her (*Indiana's* log, rec., 35). The *Mangrove*, nearer to this steamer, had also headed for her. Shortly before 6 o'clock the *Mangrove* fired three shots across the strange steamer's bow to bring her to. Both vessels stopped, and while they lay close together the *Mangrove* sent a boat to the *Panama*, with Ensign John H. Dayton, who took possession of the vessel as prize at 6.07. He remained there, and the boat and crew returned to the *Mangrove*. The two vessels then proceeded in the direction of the *Indiana*. (Depositions of Everett, rec., 31; Dayton, rec., 28; Palmer, rec., 33, and the *Indiana's* log, rec., 35.) The *Mangrove* made no signals to the *Indiana*. The *Indiana* at 6.07, when the capture was effected, was moving toward the *Mangrove* and *Panama*, and so continued until 6.45, when, arriving close by, she fired a shot across the bow of the *Panama*, and all three vessels stopped. A prize crew from the *Indiana* was sent aboard the *Panama*. (Same evidence and depositions of Decker, rec., 40, and Dawson, rec., 41.) The sunset at Habana on this day was 6.25 p. m. (add., 203). The atmosphere was clear. The *Indiana* was toward the southwest and the rays of the sun were thrown from behind the *Indiana* toward the *Mangrove*. (Munson, add., 193, q. 46; 194, q. 55; Taylor, add., 65; Waller, add., 266.) The foregoing statement is, we think, accepted by all parties as correct.

It is assumed that the time of the capture is the time (6.07) when Ensign Dayton went aboard the *Panama* from the *Mangrove* (add., 105, q. 5; 122, q. 3).

THE SCOPE OF THE DISCUSSION.

Much of the evidence is contradictory, and to determine the question whether the *Indiana* was within signal distance of the *Mangrove* the following and other primary facts must be discussed in course of the argument:

What was seen on each vessel from the other.

The distance between the vessels at 6.07.

The rates of speed of the vessels between 6.07 and 6.45.

The time elapsing from the capture to the starting of the two vessels for the *Indiana*.

The distance at which signals can be understood.

The availability of gun signals.

The bearing of these facts on the question of signal distance will appear as the evidence is discussed.

THE EVIDENCE CLASSIFIED.

The evidence will be considered in the following order:

I. The evidence from the *Indiana* to show that visual or sound signals made on the *Mangrove* could have been understood on the *Indiana*.

II. The evidence from the *Mangrove* and *Panama* on the question whether signals from the *Indiana* could have been understood on the *Mangrove*.

This bears secondarily and inferentially on the question whether signals from the *Mangrove* could have been understood on the *Indiana*.

III. The evidence of speed and distance relied upon by the court below or by the *Mangrove* here, to show that the *Indiana* was beyond recognized signal distance.

Part II.

OBSERVATIONS FROM THE INDIANA.

THE WITNESSES.

The evidence on which the case of the *Indiana* depends to show that signals hoisted on the *Mangrove* could have been read from the *Indiana* consists of depositions of the following witnesses. The rank is given as held by them at the time.

In preparatorio:

	Page.
Lieut. Benton C. Decker, U. S. N. (rec.)	40
First Lieut. William C. Dawson, U. S. M. C. (rec.)	41

Under order of this court:

Capt. Henry C. Taylor, U. S. N. (add.)	57
Capt. Littleton W. T. Waller, U. S. M. C. (add.)	265
First Lieut. William C. Dawson, U. S. M. C. (add.)	3
Gunner George L. Mallery, U. S. N. (add.)	77
Chief Boatswain's Mate Michael Carlos, U. S. N. (add.)	209
Gunner's Mate Alexander Coffee, U. S. N. (add.)	233
Quartermaster James Golden, U. S. N. (add.)	246
Machinist William J. Lee, U. S. N. (add.)	238
Machinist Thomas F. Burns, U. S. N. (add.)	258
Second-class Yeoman Howard A. Kimball, U. S. N. (add.)	251
Captain of Hold Charles Perkins, U. S. N. (add.)	83
Water Tender John Geary, U. S. N. (add.)	238
Seaman John H. Meehan, U. S. N. (add.)	263
Seaman Edward F. Maybaun, U. S. N. (add.)	254
Bugler Wayne Abbott, U. S. N. (add.)	221
Apprentice Joseph G. Lindsay, U. S. N. (add.)	227
Private W. C. Blackiston, U. S. M. C. (add.)	215

One witness on the *Indiana* was called for the *Mangrove*—Pilot Charles B. Munson (add., 189).

THE INDIANA SAW THE CAPTURE.

All these witnesses testify that they saw the *Mangrove* and the *Panama* before the capture and when the capture took place.

The brief evidence of Lieutenants Decker and Dawson in preparatorio (Rec., 40, 41) was such as to convince the district judge that the capture was visible from the *Indiana*. While he holds that the *Indiana* could not be seen from the *Mangrove*, he states that he is satisfied "that the latter could be seen, and was seen, from the bridge of the *Indiana* as testified to."

That fact being thus found on the meager record below, it is not to be disputed on the elaborate record here that the *Mangrove* could be seen and was seen from the *Indiana* at the time of the capture, 6.07 p. m., when the boat went from the *Mangrove* to the *Panama*. One of the 19 witnesses who testified to seeing the *Mangrove* was in the fighting top (Munson, add., 191, q. 12), one at the masthead (Golden, add., 247, qq. 10, 11), three (Captain Taylor, p. 60; First Lieutenant Dawson, p. 3, q. 5; Apprentice Lindsay, add., 228, qq. 9, 10) were on the bridge; the other 14 were on the deck. It may therefore be treated as positively established that the *Mangrove* was seen at that time from the deck as well as from the bridge.

EVIDENCE OF SIGNAL DISTANCE.

We proceed further and assert:

1. That signal flags, if hoisted on the *Mangrove* at 6.07, the time of the capture, could have been read on the *Indiana*.

2. That gun signals, if then made on the *Mangrove*, could have been understood on the *Indiana*.

To prove that signals could have been read on the *Indiana* if hoisted on the *Mangrove*, the witnesses were asked what they actually saw and heard, so as to afford a basis for comparison; their experience in reading signals, and finally their opinion whether they could have read signals if hoisted on the *Mangrove*. The testimony agrees in establishing the following facts:

(1) From the *Indiana* the witnesses saw a boat, 15 feet long, in the water going from one vessel to the other. Their recollection of details differs according to the use of a glass, the strength of the observer's eye, and his accuracy of recollection.

(2) They also either saw or heard the firing of one or more of the *Mangrove's* guns. Several of those who saw the gunfire saw not simply the smoke from the gun, but the horizontal jet of smoke shooting out from the gun, or the flame at the very instant of firing. Others heard the firing of the gun. The attention of some was attracted to the chase and capture by the sound of the gun.

(3) Some of the witnesses saw the shapes of objects on the *Mangrove* at the time.

(4) The witnesses all say that what they saw at the time convinced them that had the ordinary flag signals of the Navy been hoisted at this time on the *Mangrove*, such signals could have been read from the *Indiana*.

It is upon the testimony of all these witnesses, taken

in conjunction with the fact that the atmosphere was clear and the conditions favorable for reading signals at long distances, that we rely for the establishment of our case.

DETAILED EVIDENCE.

Some review of this evidence in detail is essential.

THE COMMANDING OFFICER.

The commanding officer of the *Indiana*, Capt. Henry C. Taylor, an officer then of nearly forty years' experience, gives evidence marked by care, accuracy, and candor. He says (add., 58):

> The principal points that I remember were seeing them approach each other, first. Next, the gun fired—one or more guns from the *Mangrove;* next, the appearance of a boat in the water between the two; next, the apparent steaming away of the prize from the *Mangrove*, causing me to fire a shot across her bow, as I feared the boat had not sufficient prize crew aboard to take possession of her; next, communicating by hailing by ordinary voice or by megaphone, and the putting of a prize crew on board from the *Indiana*. That is all I remember of the principal incidents.

As to the gun fire, he says (add., 58, 63):

> I saw the smoke shoot from the muzzle of the gun; I can not remember whether I heard the sound. It would not have impressed me after having seen the smoke, as light guns were frequently heard at that time, used to attract attention to signals and to hold up vessels to be searched. I do, however, remember seeing the smoke as it shot from the gun, quite distinctly.

Q. I would like to have you describe as definitely as you can just what you saw of the smoke, and of its motion.

A. I saw, as usual in such cases, a horizontal line of jet, or tongue of smoke shoot from the side of the *Mangrove* in the direction of the prize, and instantly afterwards it became a solid cloud of smoke which the wind blew away, loosing the form of a jet, line, or tongue (add., 58).

* * * * *

Q. Could you distinctly observe objects upon the *Mangrove* during the chase or was it simply the outlines of the ship? Could you see people moving about on the ship or anything of that sort?

A. I remember distinctly the shape of the small gun fired, my attention being attracted to that portion of the vessel; I remember distinguishing either that gun or some other object like it, which I supposed to be the gun which was fired (add., 63).

As to the boat in the water, he says (add., 58, 63, 64):

Q. Will you please state with like definiteness what you saw as to the boat in the water?

A. I saw the boat distinctly. I do not remember whether my attention was called to it first or whether I saw it without this notice; and I can not remember whether I used glasses, the regular binoculars, in seeing it distinctly; my impression is that I saw it first without binoculars and that I afterwards used binoculars and saw it more plainly. (Add., 58.)

* * * * *

Q. Well, could you see the people in this boat at all?

A. I saw that there were people in the boat; I do not think that I could have counted them or said how many. There was an indication that there was movement of the boat and that there were people in the boat. (Add., 63.)

* * * * *

Q. When you speak of "jet," doesn't that carry the idea of fire instead of smoke?

A. There is always some fire visible, but the question that was asked me was about the smoke; there is a moment, an instant, when the gun is fired when the smoke distinctly goes out in a straight line and almost immediately dissipates from that to the vague shape of a cloud, but in an instant it is wind blown, and in the heart of that jet of smoke there is a tongue of flame; it is not generally very plain in broad daylight. (Add., 64.)

His conclusions in regard to reading signals are (add., 59, 60):

Q. Please state whether, in your opinion, at the time when the boat was dispatched from the *Mangrove* to the *Panama*, the *Indiana* was within signal distance of the *Mangrove*.

A. Yes, within good signal distance. I did not doubt then, and I do not now, that any signal, either ordinary or extraordinary, would have been plainly perceived and recognized by us and answered by us.

Q. Was it light enough then to have used the ordinary day signals?

A. When I saw the gun, and when I saw the boat, yes—light enough for day signals.

Q. On what do you base your opinion that the *Indiana* was in signal distance?

A. Principally upon my observations of affairs as I stood upon the bridge of the *Indiana* and approached the *Mangrove* and her prize. In addition by many minor circumstances which led me at the time not to question the fact at all. Among these were the short time I had spent since leaving the *Mangrove*, by the slow speed at which the *Indiana* then habitually went, by reason of the defects and lack of repairs of her boilers and by the foulness of her bottom; these defects prevented any great speed at whatever expenditure of energy, and I was especially careful not to strain her by forcing her, because it was a question whether she could last out the war and be present in the engagements of the war if we were not especially careful of her. (Add., 59.)

* * * * *

Q. As you proceeded toward the *Mangrove* and the *Panama* after you saw the boat in the water, please state whether these two vessels continued in as plain sight as when you started.

A. After the boat was seen in the water the twilight began, and it progresses rapidly in those waters. Signaling would have been easy when the boat was in the water by day signals. (Add., 60.)

As to hearing gun signals, he says (add., 62, 64, 73):

Q. At the time when you saw the boat going from the *Mangrove* to the *Panama*, could gun

signals fired from the *Mangrove* have been heard on the *Indiana?*

A. I have no doubt that they could, but hearing them would not have been necessary, as they were plainly visible (Add., 62.)

* * * * *

Q. When you spoke of there having been no time when some signals couldn't have been received, do you have reference to flag signals—that there were times when flag signals could have been read?

A. I believe that they could have been read. I am certain that such signals as the firing of guns which we perceived afterwards would have been plainly perceived at any time. (Add., 64.)

* * * * *

Q. What I want to get at is whether you considered the usual acceptation of the term "signal distance" includes any distance at which you can hear a gun fired?

A. No positive answer can be given to that because guns are at times heard 80 to 100 miles away under rare conditions of atmosphere. But I can answer that very clearly by saying that I regard signal distance as being in the nature of things that distance at which you can perceive the calling of a consort for assistance and to be near enough to be in position to render it within a reasonable time. I believe that when that is brought down to questions of miles it is customary to say that when day signals can be read that that will be the test, but the actual point is whether you

can see that vessel and if she is in trouble, recognize the fact and go to her assistance.

Q. Do you consider that it would be a practical thing in time of war to use guns for making a telegraphic code signal in the same way that whistles are used?

A. With greater difficulty and more slowly than with whistles I believe it can be done.

Q. Is it done, to your knowledge, in any of the navies of the world?

A. I do not know, but I know that provisions are made and are carefully laid down. (Add., 73.)

THE SIGNAL OFFICER.

Admiral Taylor's testimony is confirmed by that of his signal officer (add., 3, qq. 4, 5), First Lieut. William C. Dawson, U. S. M. C., who was on the bridge with him. He testified both in preparatorio (Rec., 41) and upon examination by counsel (add., 3).

As to the boats in the water he says (add., 5, q. 13):

I saw a boat in the water between the *Mangrove* and the *Panama*. I did not see the boat lowered, but did see it in the water proceeding from the *Panama*.

Q. How did you see this?

A. I was watching both vessels with my glass.

The word "*Panama*" used here seems to be a slip of the tongue for "*Mangrove*," as he says later (add. 21, q. 163):

Q. Could you see whether it was going or coming when you saw it?

A. It appeared to me to be going toward the *Panama*.

He gives details as to the boat (add. 21–22, qq. 160-177; pp. 37–38, qq. 325–328):

As to the gun fire, he says (add. 5):

> Q. How do you know that the *Mangrove* fired the three shots to which you have testified?
>
> A. I heard the shots fired and saw the smoke from the guns.
>
> Q. Please describe what you saw when you say you saw the smoke from the guns.
>
> A. I saw the puff of smoke shoot out from the ship. I don't remember which bow it was from; from either the starboard or port bow; she was turned toward the steamer; probably it was the port bow.
>
> Q. Did you hear the guns?
>
> A. I heard them. I heard all three.

He explains this on cross-examination by saying (add. 11):

> Q. Were you looking at this smoke at the time that you heard the gun fired?
>
> A. At the time that I heard the gun fired? Possibly not, because I would see the smoke some time before I heard the gun. I may have looked away.
>
> Q. Would not the sight of the smoke coming from the gun make you naturally listen with more alertness to hear the report of the gun than you would ordinarily be listening if you had not seen the smoke?
>
> A. No, sir; I think not, because, having seen the smoke, I knew that the report would follow, and had no further particular interest in the sound, as I was probably then watching the merchant ship to see what the effect would be.

Q. How loud did this report sound to you at the distance that you were?

A. I don't remember.

And adds (add., 38):

334. Q. You know you did hear the report after you saw the flash, don't you?

A. I do not at this time remember hearing the report; that is, haven't a distinct impression on my mind of that sound. It is very probable that I did hear it.

335. Q. Didn't you state, Captain, in the direct examination that you heard the report, and that it was loud enough to have attracted the attention of other people on the ship who might have been watching and have seen the puff of smoke as you saw it?

A. I believe that I did.

336. Q. And now you say that you haven't a distinct recollection of the report?

A. I haven't such a recollection of it, nor had I when I testified in the direct examination, that I could give any correct estimate of the length of time after the sight of the smoke from the guns.

Being signal officer, he is particularly qualified to speak as to signals. He says (add., 19):

148 Q. What I want to get at is this: Have you had any particularly different instruction in signaling from that which other officers of the line of the Marine Corps and of the Navy of your rank and age would ordinarily have in their line of duty?

A. Not more than a great many others ordinarily afloat; more than some others, because I was signal officer of the ship for a period of perhaps a year and a half, and, therefore, had more practical daily experience in fact than a number of officers of my rank who were not so situated.

149 Q. Have you ever been an instructor in signaling in the Navy?

A. Yes; to the extent that all officers placed in charge of signals are required to teach their subordinates the practice of their duty.

His mind was particularly addressed to reading signals from the *Mangrove* at that time (add., 38):

330 Q. Well, then, were you not watching pretty closely in scanning these vessels to see whether anything did pass between them or not?

A. I was watching the whole occurrence, and naturally would have included that as part of it. I was also watching, however, as signal officer, for the appearance of signals, and observing the Spanish vessel with a view to more closely identifying her.

He testifies (add., 7):

26. Q. Please state whether at the time of the lowering of the boat from the *Mangrove* to go to the *Panama* you could have read flag signals from the *Mangrove*.

A. At the time of the lowering of the boat?

27. Q. Yes.

A. I could.

29. Q. State the reason for that answer.

A. Why, the flags are hoisted high above the ship, usually with the sky for a background, and they stand out to the observer much more distinctly, at least as to the outline, than a small boat on the water several miles distant. The boat and the water at that distance appear to be very similar in color, and the boat was in fact like a speck floating on the water, when a signal given to (*by?*) a ship immediately alongside could usually be read by a powerful glass for the reason above stated.

* * * * *

32. Q. You have referred to seeing smoke from the guns of the *Mangrove* when she fired. Will you please state whether a flag signal would or would not have been legible at as great a distance as what you saw of the smoke?

A. I think it would, and perhaps further, as the smoke I refer to was seen shortly after it left the muzzle of the gun, and was not the haze which rises from the discharge of a gun.

And later (add., 12):

87. Q. Are you quite sure that you could make out a flag signal at whatever distance you could see the smoke from the muzzle of a gun?

A. I am quite positive that I could read a flag signal, the conditions being reasonably favorable, at least as far as I could detect the smoke issuing from the muzzle of a 6-pounder gun at the instant of discharge, probably further.

His opinion is twice expressed most positively as to reading signals (add., 31, 39):

279. Q. Now, with all those conditions which are essential to reading understandingly a flag

signal at a distance, can you say beyond all possibility of doubt that you could have read a flag signal from the *Mangrove* at the time of the capture?

A. I am positive that from my recollection of all the circumstances named in the question, from the appearance of the *Mangrove* herself on the water, the appearance of the intervening space of water between us, and the general conditions at that time existing, that I could have read without difficulty any flag signal hoisted by the *Mangrove*. (Add., 31.)

* * * * *

339. Q. Captain, you state that you can't tell distinctly the directions that these different vessels were sailing, the *Mangrove* and the *Panama*, with relation to your own vessel, and can't state distinctly about hearing the report of the gun, or whether the boat was going or coming, or how long this stop was. If your recollection is so indifferent as to these points, how is it that you can recollect with such positive accuracy that you must have been close enough to read signals?

A. Because I have a sufficiently clear recollection of the appearance of the *Mangrove*—that is, her relative size and appearance at the time of the capture—to be sure from my experience with her and with vessels that were about her size that she was within a distance at which I could have read signals. Furthermore, I remember with equal distinctness that I had this certainty at that time, and that, as I have said before, I so expressed myself, and that there

was no difference of opinion on that point among the officers on deck in conversation about the matter at that time. (Add., 39.)

The testimony of these witnesses has been quoted so fully because they were the officers specially responsible at this time, one for the conduct of the vessel, if a signal were reported, and the other for the prompt and correct reading of signals, if made.

OTHER WITNESSES.

Other officers and men are no less positive both as to seeing the boat in the water or seeing or hearing the gun and as to the possibility of reading signals, had the *Mangrove* made them.

The following saw the boat in the water:

Gunner Mallery, from the deck, with glass or naked eye (add., 77, qq. 9, 12, 18, 19).

Chief Boatswain's Mate Carlos, from the deck, with naked eye (add., 210, qq. 9, 10).

Quartermaster Golden, from the masthead, with a glass (add., 247, qq. 10, 11).

Machinist Lee, from the deck, with naked eye (add., 240, qq. 10, 11).

Machinist Burns, from the deck, with naked eye (add., 258, 259).

Yeoman Kimball, from the deck, with naked eye (add., 252, 254).

Captain of the Hold Perkins, from the deck, with glass (add., 84, qq. 8–12; p. 85, qq. 9–13).

Water Tender Geary, from the deck, with glass (add., 240, qq. 9, 10; p. 242, q. 4).

Seaman Meehan, from the deck, with naked eye (add., 264).

Seaman Maybaum, from the deck, with naked eye (add., 255, 257).

Bugler Abbott, from the deck, with naked eye (add., 222, qq. 9, 10; 223, q. 4).

Apprentice Lindsay, from the bridge, with naked eye (add., 228, qq., 9, 10; 229, q. 4).

Private Blackiston, from the deck, with glass (add., 216, qq. 9, 10; 217, q. 4).

The boat was a ship's dingy, about 15 feet long (add., 151, q. 7), and on the trip to the *Panama* contained Lieutenant Dayton and two men (add., 137, q. 7). The ordinary complement of this boat would be eight to ten men, and some of the *Indiana's* witnesses (Carlos, add., 210, qq. 9, 10), seeing men in the boat, assumed this as the actual number; others observed and state a less number (Geary, four or five, add., 240, qq. 9, 10; 242, q. 4; Maybaum, five, add., 255, 257); and Lee, with naked eye (add., 240, qq. 10, 11), gives the exact number correctly. That some state the complement shows that their vision was clear enough to fix the size of the boat, but not to discriminate the occupants; that others give a reduced number, even with the naked eye, shows their accurate vision, since the presumption from the size of the boat would be of a larger crew.

The witnesses as to the gunfire are as follows:

Captain Waller saw the smoke (add., 266, qq. 3, 5).

Gunner Mallery saw the smoke of the gun and flash (add., 77, q. 12). He saw the ordinary puff of

smoke which gushes from the muzzle of the gun when the gun is fired and the flash which also follows (add., 78, q. 13). His impression is that he did not use a glass, although he is not positive.

Chief Boatswain's Mate Carlos did not hear the gun fire, but he saw them either working or securing a gun on the starboard side of the *Mangrove* (add., 209, qq. 6, 7).

Gunner's Mate Coffee heard one gun fired from the *Mangrove* across the bow of the *Panama* (add., 234, q. 7).

Quartermaster Golden saw the flash and smoke of two shots fired from the *Mangrove* (add., 246, q. 6; 248, q. 3).

Machinist Lee saw and heard three guns fired from the *Mangrove;* saw the flash of the guns and the smoke (add., 239, q. 6; 240 q. 7).

Quartermaster Burns saw the flash of the guns from the *Mangrove* (add., 258).

Yeoman Kimball heard the report and saw a gun fired; is not sure how many—one, he thinks (add., 252); thinks it was one of the starboard forward guns.

Water Tender Geary saw three guns fired from the *Mangrove* from her port side (add., 240, q. 6).

Seaman Maybaum had his attention called to the *Mangrove* by shots fired from her; he saw a puff of smoke and a flash (add., 255).

Bugler Abbott saw the smoke of one gun (add., 222, qq. 7, 8; 223, q. 3).

Apprentice Lindsay saw the smoke and heard the

gun fire; is certain of two shots (add., 228, qq. 6, 7; 229, q. 3).

Private Blackiston heard reports of a gun; his attention was called to the *Mangrove* by the firing of a gun (add., 216, q. 6; 217, q. 3).

Pilot Munson saw the *Mangrove* fire a shot and came down and told Captain Taylor, and thinks that the captain said that he could see the smoke also (add., 191, q. 13).

WHAT THE WITNESSES SAW.

The reading of this testimony makes the impression absolute upon the mind that the distance between these two vessels was such that gun shots could be and were heard, and that the puff of smoke and flash from the gun, issuing at the moment of the firing, could be and were seen. This the witnesses differentiate from seeing the cloud of smoke that arises in the air after the shot.

There are many differences in the observations of the witnesses. Some heard the shots but did not see the flash; others saw the flash but did not hear the shots. Captain Taylor explains that if one were looking at the *Mangrove* and saw the shots, his mind would not be impressed with the sound later. If on the other side of the *Indiana*, he would not see the shots but would hear them. Some of the witnesses state that the guns were upon the starboard, and some upon the port side. Both port and starboard guns were in fact, fired (Everett, add., 105, q. 4). Some of the witnesses noticed the form of the guns; some remembered all three shots; some but two, and some no more

than one. Even the captain of the *Panama* recalled but two (Rec., 14, q. 3). These differences of recollection, in view of the distance of time at which the depositions were taken (three to four years), do not detract from the good faith of the witnesses or render less certain the facts that gun shots were heard and the jet of smoke and flash were seen from the *Indiana*.

There can be no question that just before the capture, 6.07, from the *Indiana* could be seen the boat in the water and the horizontal shooting out of smoke from the gun and the jet of flame.

SIGNAL DISTANCE ESTABLISHED.

Based upon the observations which they made of the distinctness of the *Mangrove* and the *Panama*, of the boat in the water between the vessels, of the gun fire, and the general atmospheric conditions, the witnesses all state the opinion that flag signals hoisted on the *Mangrove* at the time of the passing of the *Mangrove's* boat to the *Panama* could have been read on the *Indiana*.

Captain Waller, U. S. Marine Corps, has been reading signals for twenty-three years. In his opinion the *Mangrove* was in signal distance the whole time, even before a gun was fired (add., 267, qq. 12, 13).

Lieutenant Decker says that at the time of the capture signals by shapes or sounds could be distinguished; that when the *Panama* headed toward the *Indiana* the colors of her ensign could be distinguished; that the *Mangrove* was within easy signal distance when the prize was first sighted, and that visual signals or sounds could be easily discerned (rec., 40, qq. 4–7).

Gunner Mallery was chief signalman of the squadron of evolution for about three years; thinks that flag signals could have been used at this time (add., 79, q. 27). They could have used gun signals (add., 79, q. 27; add., 81, qq. 21–23). He says that he had read signals with a glass when he could just see the mast of a vessel with the naked eye (add., 81, q. 27).

Chief Boatswain's Mate Carlos was acquainted with signal flags by observing others use them (add., 210, q. 11), and by instructions or drills (add., 211, q. 6). Using only the naked eye, he says that in his opinion, signal flags on the *Mangrove* could have been read from the *Indiana* "because I could see the men on the *Mangrove's* deck" (add., 210, q. 12).

Quartermaster Golden has had much experience with signals, because quartermaster. At the time of the capture he could read easily and make out easily the colors of signal flags through the long glass or by binoculars, because he could make out the colors of the *Panama* (add., 247, q. 12).

He was quartermaster in two cruises from 1893 to 1898; served on a flag-ship where he read all the signals himself and read signals about 8 miles with a glass (add., 248, q. 6).

Machinist Burns had been a signal boy for nine months before this occurrence, and says that signals hoisted on the *Mangrove* could have been read from the *Indiana* with the ordinary binoculars; he knows it as a positive fact as a signal man (add., 259).

He describes the duties of a signal boy (add., 260, 261), and says that he is certain that he could read a

signal farther than he can see a boat 15 or 18 feet long in the water, because of the colors of the signals and of the elevation of the signals (add., 261).

Yeoman Kimball, who was acquainted with signal flags in the Navy and could read numbers with the flags, says that undoubtedly signals could have been read (add., 252, 253).

Captain of the Hold Charles Perkins could read signals and knows their numbers but not their meaning (add., 86, qq. 28, 29), and at the time of capture says that signal flags could have been distinguished with glasses, but not with the naked eye (add., 84, q. 20).

Seaman Maybaum had received instruction in signals and could read flag signals. He had been three years in the Navy and could, with the aid of a glass and a book, have read flag signals hoisted on the *Mangrove* from the *Indiana* at this time. He says (add., 255):

> Q. Why do you say that you could have read signals at that time?
>
> A. I feel positive—why, well, seeing a boat pulling across the water, you can read signals, from previous experiences of distance while I was in the Navy.

Apprentice Lindsay had had five months' experience in making signals and using flags, and at the time of capture says that signals could have been read with a glass from the *Indiana* if hoisted on the *Mangrove* (add., 228, qq. 11, 12).

Private Blackiston had experience in reading and making signals with flags and thinks that flag signals

could have been read at the time stated (add., 216, 217, qq. 11, 12).

Pilot Munson, called for the *Mangrove*, says on direct examination that he does not think that signals could have been read at the time (add., 192, q. 19). He has had no naval experience in reading signals and his only experience in the merchant service was not in late years. The force of his testimony on this point is wholly destroyed by his own letter (add., 196) produced at this time and identified by him, dated January 13, 1901, in which he states: "The *Indiana* was in signal distance and no other."

We have not referred to the depositions of Gunner's Mate Coffee, Machinist Lee, Water Tender Geary, Seaman Meehan, and Bugler Abbott, because these witnesses all state that they have not had experience in reading signals, although they say that signals could have been read.

The depositions of eight enlisted men in the Navy were taken on interrogatories under stipulation of counsel (add., 205, 249). Seven of these witnesses were asked by the counsel for the *Mangrove* the following question:

> Cross-interrogatory 7. Did you see the signal made by the *Mangrove* when she captured the *Panama?*

This may be called a "catch question," likely to trip a witness of average intelligence, since it is not contended that any such signal was made. A similar question was asked of one witness on oral examination (add., 265).

All the witnesses who have knowledge of signals deny seeing any signal except Apprentice Lindsay, who says (add., 230, q. 7) that he saw the flags, but did not read the signals, an answer not inconsistent with his meaning that he saw flags (the ensigns were flying), but no signals. Lee (add., 242, q. 7), Geary (add., 242, q. 7), and Meehan (add., 263, 265), none of whom has had experience in reading signals, say that they saw signals. Their opinions as to signal distance are not relied on. Thus none of the witnesses having expert knowledge of signals fell into this trap.

The depositions of the eight witnesses on interrogatories (add., 205–250) were taken at widely scattered points over the world, on naval vessels, before disinterested naval officers, under circumstances most indicative of good faith.

It is respectfully submitted that the evidence thus shown is convincing upon the two material points:

(1) That visual signals, if hoisted on the *Mangrove*, could have been read from the *Indiana*.

(2) That gun signals, if made on the *Mangrove*, could have been understood on the *Indiana*.

The witnesses called occupied every position on the ship from captain to apprentice boy. They had performed different duties in regard to signals, and were competent to express an opinion on the question of reading signals. The positive impression on the minds of all was that, with the favorable atmospheric conditions then existing, signals could have been read without difficulty from the *Indiana* if hoisted on the *Man-*

grove. Such an universal opinion is convincing of the fact.

Upon this evidence, of which very little was before the court below, there can be no difficulty in reaching the conclusion that the *Indiana* was in signal distance of the *Mangrove* at the time of this capture by the use either of the ordinary visual day signals or of gun signals.

GUN SIGNALING AUTHORIZED AND PRACTICABLE.

A strong effort was made in the cross-examination of various witnesses to show that gun signaling is an unrecognized and impracticable mode of signaling. Captain Taylor says that provisions for gun signals are carefully laid down (add., 73, already quoted). The official signal book is confidential (add., 37, q. 317). Lieutenant Dayton, of the *Mangrove*, furnishes an extract from it which puts the question as to the use of gun signals beyond controversy (add., 142, qq. 56, 57):

> Q. 56. Where are the rules laid down for signaling in the Navy?
>
> A. In the Instructions for Signaling, United States Navy, 1898.
>
> Q. 57. What are the circumstances provided there in which sound signals may be used in the daytime?
>
> A. On page 33 of the Instructions for Signaling, United States Navy, 1898, under the head of "Sound signals," it says: "At night, or in a fog, mist, or falling snow by day or night, sound signals may be made with gun, bell, fog horn, or steam whistle.

"Gun: In cases of extreme urgency guns may be fired, using the General Signal Book. The numbers will be made as in the numerals of the Naval Code, one gun being a '1,' two guns in rapid succession a '2,' and three guns in rapid succession a '3:' the affirmative or 'yes,' 1212; the negative or 'no,' 2121; the numeral, 2122; the interrogatory, 1211." That is in the Signal Book in reference to signaling guns.

This proof offered by the *Mangrove* was admitted with the assent of the other parties.

What this Signal Book is was explained by Lieutenant Dawson (add., 37, qq. 316, 317, 318):

316. Q. What is this General Signal Book to which you refer?

A. It is the book issued by the Navy Department to all ships in commission, containing a large number of previously constructed messages, each being indicated by its own number, so that when that number is made by visual or sound signals, on referring to the same number in the General Signal Book the message is understood, and vice versa, as regards sending this message.

(Mr. Micou objects to this question on the ground that there is better evidence of what the Signal Book says, namely, the book itself.)

317. Q. Can you state whether this book is of a confidential character?

A. It is.

318. Q. To whom is it furnished?

A. To the commanding officer of each vessel, as I remember.

His further testimony in regard to gun signaling appears (add., 16, 17, and 18). He declares its practicability as follows (add., 17):

131. Now, Captain, my question is not whether you could devise a system by which you could do this thing with guns. My question is, could you, with the experience that you have had in the Navy, with the practical working of this to-day, if you were called upon to-morrow, send a signal with guns that would be understood by any other signal officer? I don't mean by that that he would understand it as a signal, but that he would be able to intelligently read and interpret your signal?

A. I believe that I could, if the other signal officer had been accustomed to the use of any sound signals.

132. Q. Do you believe that you could have interpreted on board the *Indiana* a signal made by guns fired from the *Mangrove* asking you in what direction the flagship was?

A. If the signal had been made as described in the tactical signal book I believe that I could.

133. Q. Does the tactical signal book prescribe signals of this kind to be made with guns, or just without mentioning the instrument that you make them with?

A. It mentions specially three methods of making sound signals. They are the use of guns, with whistles, and with the bell. These three are prescribed in the official book, and are required to be taught on board naval vessels.

134. Q. Now, you say that you believe that

you could have read such a signal as I have mentioned just now from the *Mangrove?*

A. If it had been properly made; yes, sir.

135. Q. Are you satisfied beyond all doubt that you could have read such a signal?

A. I can only say that I was at the time thoroughly familiar with sound signals, and had such a signal been properly sent I am confident that I should have been able to understand it.

Captain Taylor's evidence has been lately quoted (add., 73).

Gunner Mallery (add., 81) discusses the same subject.

It is thus beyond doubt that signaling by gun fire is officially recognized as a mode of signaling to be used when necessary, and is wholly practicable.

The courts can not discriminate between two modes of signaling equally recognized and practicable.

Part III.

OBSERVATIONS FROM THE MANGROVE AND PANAMA.

The testimony from the opposite end of the scene, the *Mangrove* and *Panama*, is divided into three classes:

(1) The testimony from the *Mangrove* of the officers and men of the *Mangrove*.

(2) The testimony from the *Mangrove* of an officer and a petty officer of the *Indiana*.

(3) The testimony from the *Panama*.

These will be considered in this order.

THE MANGROVE'S EVIDENCE.

The officers of the *Mangrove* were Lieut.-Commander William H. Everett, commanding, Ensign John H. Dayton, and Cadet Leigh C. Palmer. She had about thirty men (add., 143, q. 73).

Commander Everett in preparatorio testifies positively (rec., 31, q. 4), "There was no vessel or vessels of any description within sight at the time I made this capture," and repeats it (rec., 32, q. 10); "I repeat at the time of the capture of the *Panama* by the *Mangrove* there were no vessels of the Navy in sight or within signal distance." His testimony was afterwards given in full detail upon examination and cross-examination. He says (add., 108, q. 10) that had a vessel been in signal distance he could have seen it with the naked eye, and that all he saw was smoke to the southward and westward "in the direction of where we had left the *Indiana*."

This witness' testimony as to matters of eyesight is considerably weakened by the fact that (add., 117, q. 118) he had used glasses since 1890, and that on the 6th of June, 1898, he had such trouble with his eyes (add., 108, q. 19) that he had them examined by an eye specialist. There is other evidence also that he stated that his eyesight was defective and that his eyesight was observed to be defective (add., 45).

Ensign Dayton, the boarding officer, in his deposition in preparatorio, said: "There was no vessels within signal distance at the time of capture" (rec., 29, q. 4), and in answer to the tenth question (for question see

rec., 22, top of page), asking for other facts in regard to signal distance, he says: "I have no more facts to state." He testified also upon oral examination that upon arrival on the *Panama*, not seeing the *Indiana*, he asked the *Mangrove* for the *Indiana's* bearings, and, heading the *Panama* as directed, saw the smoke of the *Indiana* and in five or ten minutes her fighting top (add., 138, qq. 16 and 19; 145, qq. 10 and 19). He says that he did not look around for the *Indiana* after he saw her at the beginning of the chase.

Naval Cadet L. C. Palmer testified in preparatorio that at the time of the capture he saw the smoke of a vessel which he took to be the *Indiana*, and ordered the first and second mates and apothecary to look whether there were other vessels in sight; that they reported no other vessel than the *Panama;* that he looked with glasses and could see no other ship, but could see smoke which he took to be the smoke of the *Indiana* (rec., 33, q. 4), and concludes his deposition by saying "There were no vessels of the United States Navy within signal distance at the time the *Mangrove* captured the *Panama*." On oral examination he testifies (add., 124, qq. 9, 11), that the smoke came from one place. He says (add., 133, q. 37) "I saw smoke rising as one might see it from a bonfire, or ship at sea."

Other witnesses, enlisted men on this vessel, testify as do these officers. The depositions of eight of these were taken in preparatorio (rec., 22 to 34), and of these, four were reexamined before counsel. Five more enlisted men in addition were examined under the order of

this court. All but three (Ellmore, add., 168, qq. 25, 26; Jones, add., 181; Roy, add., 187) testify in general to the fact as stated by one of the officers, that they saw no ship in sight, or that they saw the smoke of what they believed to be the *Indiana*. Some of these witnesses (see Hansen, add., 165, qq. 12–15) say that Ensign Dayton or Cadet Palmer told them to look around for other vessels.

THE *INDIANA'S* EVIDENCE ON THE *MANGROVE*.

When the *Mangrove* set forth by direction of the *Indiana* for Key West, she took as passengers Chaplain William G. Cassard and Chief Yeoman Charles E. Murray of the *Indiana* (add., 105, q. 4). They were going to Key West for the officers' and enlisted men's messes of the *Indiana* to purchase provisions. Their testimony was taken in preparatorio and again on oral examination under the order of this court.

The chaplain answered the inquiry as to what vessels of the Navy were within signal distance by saying (rec., 39, q. 4):

> The *Indiana* only. She was within 3 or 4 miles of us. The prize was between the *Mangrove* and the *Indiana*, the *Mangrove* having passed the prize and turned again toward her. Any of the ordinary visual signals should have been discerned by the use of glasses.

In his subsequent oral examination he makes the same statements no less clearly, but more fully, testifying as follows (add., 44):

> Q. At this time, when the mate reported this

fact to Captain Everett, did you yourself observe whether the *Indiana* was in sight?

A. I did; and saw her.

Q. When the vessel stopped and the boat was sent from the *Mangrove* to the *Panama*, did you then notice whether the *Indiana* was in sight?

A. She was in sight. There never was a time from the time that the chase began when the *Indiana* was not in sight. There might have been times when we were so close under the side of the *Panama* that we couldn't have seen her just for a moment.

Q. Please state whether or not the time when the vessel stopped and the boat was sent from the *Mangrove* to the *Panama* the *Indiana* was within signal distance.

A. She was.

Q. Will you please explain what you mean by "signal distance?"

A. I mean the distance at which flags could be read from the bridge of the *Mangrove*. I did not have any glasses during the entire chase. I used only my naked eye.

Q. Please let us know as correctly as you can what appearance the *Indiana* presented at the time, and what you could see about her.

A. I could clearly make out the entire ship, including her whole hull—certainly a part of her hull—from the very beginning, so clearly and unmistakably the *Indiana* that the question of what ship it was never came up at all.

Q. What facts are there that lead you to the conclusion that the signal flags could be read from the *Mangrove* on the *Indiana* at that time?

A. My observation of the distances at which we have read signal flags in fleet or in communicating with single vessels.

Chief Yeoman Murray answers the fourth interrogatory in preparatorio as to what vessels were within signal distance, as follows (rec., 43, qq. 4–7):

The *Indiana* only. I mean by "within signal distance" that the ordinary day signals used in the navy hoists of flags or wig-wag could be read by use of glass from the bridge of the *Mangrove*. A wig-wag from the *Indiana's* crane could have been read by the use of a glass.

* * * * *

The *Indiana* was within signal distance at all times during the chase—from the time the prize was first sighted until captured. I mean by "signal distance" as explained in preceding answers.

This witness had been in the Navy over four years at this time (add., 88, q. 2), and upon oral examination says (add., 91, q. 15):

15. Q. At that particular time, when Ensign Dayton went on board the *Panama*, can you state whether the *Indiana* was within signalling?

A. She was within signalling distance—could have signalled one another without any trouble.

These two witnesses are interested in the prize as members of the complement of the *Indiana* (R. S., § 4633); but the last witness, Murray, doing duty on board the *Mangrove* at the time (he loaded the star-

board gun, add., 89, q. 10), would draw a larger amount of prize money under section 4631 of the Revised Statutes as a temporary member of the crew of the *Mangrove* than he would if the *Indiana* shares. This is the view of the Court of Claims (*The Santiago Bounty*, 36 C. Cls. R., 203) where they say:

> (9) The officers, naval cadets, enlisted men, private marines, and members of the crew are entitled to share in the bounty awarded to the vessel on which they were serving, in obedience to orders, during the engagement, though their pay account may have been kept on other vessels or at the Naval Academy.

He is therefore to be regarded as a witness testifying against his own interests, when testifying in favor of the *Indiana's* right to share.

THE EVIDENCE FROM THE *PANAMA*.

But there is another source of information, the *Panama*. The officers of the *Panama* were examined in preparatorio, and interrogatories were propounded to them as to the vessels in sight at the time of the capture. Manuel Quevedo, captain of the *Panama*, testifies (rec., 14, q. 3):

> * * * Two shots were fired by the *Mangrove*. My ship was captured by the *Mangrove*. The ship that captured my vessel I believe to be a war ship. There were two ships in sight at the time we were captured. Afterwards I was informed that one was the *Indiana* and one was the *Wilmington*. I first saw the *Mangrove*—that was at 5.30 p. m., and shortly afterwards I saw the towers of the other ship.

Ramon Burgas, supercargo of the *Panama*, testifies (rec., 7, q. 3):

> * * * There was no resistance. We were captured by the U. S. S. *Mangrove;* she was a ship of war. At the time of the capture there were two war ships is distance (*sic*). I could not see the body of the ships, but could see their towers. Afterwards we steamed up to the war ships with the *Mangrove* and found that the ships were the *Indiana* and the *Wilmington.*

Gaspar Thompson, chief engineer of the *Panama*, was not able to testify fully, as his duties required him below, but Dayton says that he was on deck at the very time when Dayton boarded the *Panama* (add., 137, end of q. 7). He says (rec., 10, q. 3):

> * * * We made no resistance at the time. We were captured by the U. S. S. *Mangrove.* The ship that captured us was a ship of war. I believe the U. S. S. *Indiana* and another ship were in sight. I was chief engineer of the *Panama* and my duties demanded my presence below, so I am not prepared to state positively as to time we sighted the other ships.

The time when they saw the "towers" of the *Indiana* is fixed by these witnesses. Quevedo says shortly after 5.30. He says that the *Indiana* was in sight "at the time we were captured." By this he means the time of his stopping for surrender, which he thus states (rec., 13, q. 3): "At 5.50 the first shot was fired by the *Mangrove.* After the first shot I stopped the ship."

Burgas says that "at the time of capture" he could see the *Indiana's* towers. He does not fix this time,

but Thompson confirms Quevedo's view of what constituted the capture by saying (rec., 10, q. 3): "The ship was taken about 20 miles from Habana, Cuba, at about 15 minutes to 6 o'clock p. m., on the 25th day of April, A. D. 1898." The *Panama's* officers plainly mean to say that they saw the *Indiana's* "towers" at about 5.45 to 5.50.

They undoubtedly swept the horizon before surrendering. The *Mangrove* observed that they began to remove the gun covers, evidence of a purpose to make a contest. Something caused them to give up this intention, since they quickly replaced them (add., 158, q. 14; add., 171, q. 7). It may well be that the sight of the *Indiana* determined the surrender.

A CONFLICT OF EVIDENCE.

We thus have an absolute conflict in testimony on this subject. The officers and men of the *Mangrove* say that no vessel was in sight when the capture was effected, some saying that they saw smoke (Clinton, rec., 27; Dayton, rec., 29; Everett, rec., 31, 32; Cosgrove, rec., 34, 35), and others failing to mention even smoke.

The officer and petty officer from the *Indiana* on the *Mangrove* at the time say that they saw the *Indiana* distinctly and within signal distance at the time of capture.

The officers of the *Panama* say that they saw the *Indiana* at the time of capture. Dayton, who went on the *Panama*, says that he did not see the *Indiana* until the *Panama* had proceeded some distance after the cap-

ture (add., 138, qq. 16–20; 145, qq. 11–13, hereafter quoted).

The record left by this testimony is unsatisfactory.

CONCLUSIONS OF FACT.

Some conclusions may be reached.

THE *INDIANA'S* EVIDENCE NOT CONTRADICTED.

(1) The evidence adverse to the *Indiana* has a direct bearing only on the question whether signals hoisted on the *Indiana* could have been read from the *Mangrove*. We maintain, and shall show in discussing the law hereafter, that this is immaterial, the vital question being of signals on the *Mangrove* being read from the *Indiana*.

GUN SIGNALS NOT AFFECTED.

(2) No effort is made to show that gun signals between the *Indiana* and *Mangrove* could not have been understood on either vessel.

THE *INDIANA'S* EVIDENCE NOT IMPEACHED.

(3) The bearing, if any, of all this testimony is extremely indirect on the issue whether the *Indiana* could read signals hoisted on the *Mangrove*. The argument will doubtless be made for the *Mangrove* that if this testimony be correct, no such objects could have been seen from the *Indiana* as testified to by the witnesses.

This argument is without force because conditions were evidently more favorable for reading from the *Indiana* signals hoisted on the *Mangrove* than from the *Mangrove* signals hoisted on the *Indiana*.

Thus Munson testifies (add., 193, q. 46) "The northward atmosphere was very clear; to the southward it was hazy," and (add., 194, q. 54) "I think I could have seen the *Panama* and the *Mangrove* plainer than they could have seen the *Indiana*."

Lieutenant Dayton (add., 146, qq. 28, 29) says that the sun was shining down from the direction of the *Indiana* toward the *Mangrove* and the *Panama*, so that he could not see distinctly, and the reflection would be from these vessels toward the *Indiana*.

Yeoman Murray (add., 91, q. 18) says that the *Mangrove's* signals could have been more readily read than the *Indiana's*, and Captain Taylor makes a statement of the general conditions (add., 64) as follows:

> Q. What are the most favorable circumstances for reading signals?
>
> A. With the sun behind the observer and tolerably low down, with clear conditions of atmosphere. The light as I describe it, clear conditions of atmosphere, and not too much wind.

Cadet Palmer is too sturdy a partisan to admit even this, but says (add., 136, q. 1):

> Recross-q. 1. There is no doubt in your mind that if the *Indiana* could see the *Mangrove*, the *Mangrove* could see the *Indiana* at the same distance?
>
> A. Not the slightest.

For this reason the testimony of the *Mangrove's* witnesses as to conditions there, even if believed, does not

affect the probative force of the testimony of the *Indiana's* concurring witnesses as to conditions observed from the *Indiana* and their conclusion as to signal distance based upon their individual observations.

THE *MANGROVE'S* EVIDENCE ALL INTERESTED.

(4) On the question whether the *Mangrove* could have read signals hoisted on the *Indiana*, the *Mangrove's* testimony consists solely of testimony of the officers and men of the *Mangrove*. It is all interested and the interest is very large. The individual interests of the *Indiana* at most are very small. So far, therefore, as interest may affect testimony, the *Mangrove's* evidence is very much more largely interested than that of the *Indiana*.

The testimony for the *Indiana* as to what was seen from the *Mangrove* and *Panama* consists of depositions of five witnesses, of whom only one is interested, Chaplain Cassard. He would share with the *Indiana*, but would not share with the *Mangrove* alone. Murray, on the other hand, would share more largely on the *Mangrove*. The three witnesses on the *Panama* have no interest whatever. In balancing the testimony of the witnesses it may very well be said that great weight should be given to the evidence of Murray and of the disinterested witnesses on the *Panama*.

It can not be said that the *Mangrove's* evidence on this point can be reconciled with that of the officers of the *Panama* on the ground that the superior height of the *Panama* enabled them to see the *Indiana* when the *Mangrove* could not. Ensign Dayton, we have already

seen, says that he did not see the *Indiana* from the *Panama* until about ten to twenty minutes after he went on the *Panama* (add., 138, qq. 16–20; 145, qq. 11–13). He disagrees entirely with the officers of the *Panama*. The *Mangrove's* witnesses who saw the *Indiana* when or before her shot was fired, fix the time of first seeing her at an hour consistent with Dayton's testimony but quite inconsistent with the officers of the *Panama*, even allowing for the difference in height of the two vessels. Thus Palmer did not see the *Indiana's* fighting top until twenty minutes after they started (add., 134, qq. 53, 54), and Overn about one-half hour after the capture (add., 156, q. 4, 5). If the *Indiana* could not have been seen from the *Mangrove* until the time thus stated by these witnesses, she could not have been seen from the *Panama* at the time of capture, fixed by her officers as they testify.

The testimony from the *Indiana* makes it clear that the failure of the officers and men of the *Mangrove* to see the *Indiana* was not due to the *Indiana* being outside the line of sight, since at the moment of capture the *Indiana* saw a boat in the water. If the line of vision of the *Indiana* extended as low down as to a boat in the water, there must have been a direct line of vision between the *Mangrove* and the *Indiana* at the same time.

It may be said that the disinterested testimony of the *Panama* is that the *Indiana* was only in sight and not in signal distance. It is true that the witnesses were not interrogated as to signal distance. It is

doubtful if they were qualified to testify as to naval signals. The importance of their evidence is that it contradicts the *Mangrove's* testimony. It shows that the *Mangrove's* witnesses could not be right in their view that the *Indiana* was not in sight at the time. Having thus contradicted their testimony as to the visibility of the *Indiana*, the testimony of Cassard and Murray that she was then within signal distance may be accepted as unimpeached by credible testimony.

THE *INDIANA'S* EVIDENCE AFFIRMATIVE.

(5) The *Indiana's* evidence is affirmative and the *Mangrove's* negative. This alone should be sufficient to determine in the *Indiana's* favor the question whether the *Mangrove* could have read signals hoisted on the *Indiana*. The witnesses on the *Panama* and two witnesses on the *Mangrove* testify that they saw the *Indiana*. The other witnesses on the *Mangrove* say that they did not see the *Indiana*. The affirmative testimony must outweigh the negative.

This court announced this rule in *Stitt* v. *Huidekopers* (17 Wall., 394):

> On this subject the court charged the jury "that it is a rule of presumptions that ordinarily a witness who testifies to an affirmative is to be preferred to one who testifies to a negative, because he who testifies to a negative may have forgotten. It is possible to forget a thing that did happen. It is not possible to remember a thing that never existed."
>
> We are of the opinion that the charge was a sound exposition of a recognized rule of evi-

dence of frequent application, and that the reason of the rule, as stated in the charge, dispenses with the need of further comment on it here.

The failure to see may have resulted from many circumstances. The hurry and excitement of the chase account for much. Thus Commander Everett never saw the *Indiana* at all until after she fired the shot (add., 117, q. 114), although he knew that the *Mangrove* was seeking the *Indiana*, and it was his special duty to be on the lookout for her. Charles Peterson says that the shot from the *Indiana* was a surprise to everybody, and that they did not know where the shell was coming from (add., 159, q. 33). Mate Cosgrove, who was standing with Commander Everett, says that neither he nor the commander saw anything. He speaks of the *Indiana* as an unknown vessel (add., 171, q. 7). On the other hand, Palmer (add., 134, q. 53) and Dayton (add., 138, q. 16) saw the *Indiana* long before this. The confusion and excitement of the chase and other like circumstances may account for such differences in view as these.

If the witnesses on the *Mangrove* differ in what they saw, and some were so blind to what others saw, it is safe to conclude that all the *Mangrove's* witnesses may have failed to see the *Indiana* when she was seen by Cassard and Murray and the officers of the *Panama*.

We may safely rely on the principle that affirmative should outweigh negative evidence.

(6) The learned judge, deciding this case below on the meager record then in hand, says (rec., 57):

> To declare that the witnesses of either side have willfully testified falsely is not a satisfactory conclusion, especially when the character and official standing of many of them is considered, yet such conclusion must be reached unless some explanation of the discrepancy is found.

We have constantly refrained from contending as essential to our case that the officers and men of the *Mangrove* have been deliberately untruthful in their testimony. We do not assert or believe such a thing either of the officers in a service noted for honor or of the brave men who served their country with equal gallantry in humbler places. It is our view that the smoke of the guns, the excitement, the sailor's pride in his ship and in the honorable exploit, the unconscious effect of the desire for the sole honor of victory—more indeed than the wish for prize money—influenced the *Mangrove's* officers and men in not seeing what required concentrated vision to see. We credit their good faith, but think them greatly in error.

On the contrary, to accept the *Mangrove's* view is to accuse the *Indiana's* witnesses of wholesale untruth. If even the fighting top of the *Indiana* could not have been seen from the *Mangrove* until from ten to twenty minutes after the *Mangrove* started toward her, Chaplain Cassard and Yeoman Murray, testifying positively to an opposite affirmative fact, must have purposely tes-

tified untruthfully. The nineteen officers and men of the *Indiana* must also be testifying untruthfully with deliberation when they say that a clear line of vision extended from the deck and superstructure of the *Indiana* to the boat in the water at 6.07 and the gun on the lower deck of the *Mangrove*, if the distance was so great that the fighting top of the *Indiana* was not within the line of sight until 6.17 or even 6.27. They could not have seen what they say they saw had this been true.

We believe that the right aspect of this case is the one more nearly consistent with reasonably good faith on both sides. There can be no question that this is the aspect of the *Indiana*. That may be held if the *Indiana's* theory is supported; it can not be held on the *Mangrove's* theory.

THE RESULT OF THE EVIDENCE.

From these considerations we submit:

I. That the testimony from the *Mangrove* does not affect the conclusion based on the testimony from the *Indiana*, that at the time of capture the *Indiana* could have read visual signals hoisted on the *Mangrove*.

II. That it has no bearing upon the conclusion that the *Indiana* could have understood gun signals made from the *Mangrove*.

III. That the *Indiana* was in sight from the *Mangrove* at the time of capture, and signals hoisted on the *Indiana* could have been read on the *Mangrove*.

PART IV.

EVIDENCE OF SPEED AND DISTANCE.

The *Mangrove* maintains that other evidence, not already cited, shows various facts relating to speed, distance, and signaling, from which is reached a conclusion unfavorable to the *Indiana*'s claim, and contradictory of her evidence. The *Indiana* contends that the factors relied upon are, in general, uncertain; that they lead to no positive conclusion, and that all such evidence analyzed and read together contains nothing inconsistent with the *Indiana's* claim or the evidence on which she relies.

THE QUESTIONS AT ISSUE.

It is conceded that the moment of capture was 6.07 and that the *Indiana* fired her gun at 6.45. Evidence is therefore introduced on the following points, designed to show how distant the two vessels were at 6.07:

(1) Were they approaching for this whole period? If not, for how long was either not moving?

(2) At what rate of speed were they moving?

(3) How far were they apart when the *Indiana* fired her gun at 6.45?

Accurate answers to these questions would fix their distance apart at 6.07, the moment of capture.

Evidence is also adduced to show the distance by a different mode of calculation based on the following facts:

(4) The time after the capture when Dayton first saw the *Indiana* from the *Panama*.

(5) The distance by standard tables at which an object of the known height of the *Indiana's* top could be seen from the known height of the *Panama's* bridge.

From this, with the proof of speed, is aimed to be deduced the distance at 6.07.

Having these two modes of proof of distance, evidence is next introduced as to:

(6) The extreme distance at which signals can be read.

No evidence has been introduced on behalf of the *Mangrove* as to the limit of signal distance by gun fire.

The *Indiana* disputes the conclusions reached upon the evidence on these points because the elements of uncertainty are too great. Thus the proof is indefinite and conflicting as to (1) the length of time of the *Mangrove's* approach, (2) the rate of speed of both vessels, (3) their distance when the *Indiana's* gun was fired, (4) the time elapsing until Dayton saw the *Indiana* and whether he saw her as soon as she was visible, and (6) the extreme of signal distance. Without accuracy on all these, the results are of little importance.

The result of the first mode of calculation, on the *Mangrove's* evidence, is to put the *Indiana* at a distance of 11 to 12 miles, of the second, of about 16.

We will first review the evidence on all these points separately and then discuss the result of the evidence.

THE TIME OF APPROACH OF THE VESSELS.

(1) Were the *Indiana* and *Mangrove* approaching during the whole time between 6.07 and 6.45?

It is conceded that the *Indiana* was approaching all

the time. The *Mangrove* had stopped to send her boat to the *Panama*. The uncertainty is as to the length of the stop after 6.07. The best evidence on this subject is that on the *Mangrove* itself.

Chaplain Cassard says that from the time the vessels stopped until they started again was about twenty minutes (add., 42).

Yeoman Murray says that it was fifteen to twenty minutes from Dayton's arrival on the *Panama* till the start (add., 90, q. 12).

Commander Everett fixes the time when the two ships were at a standstill at about fifteen minutes (add., 109, q. 29). He gives the details of this later (add., 116, 117, qq. 102–109), as follows:

	Minutes.
To get the boat out	1
To go over	5
To come back	5
To get the boat on board	2 to 3
A total of	13 to 14

Ensign Dayton says that it was not over ten minutes from the time he got on board until they started (add., 138, q. 16).

Chipchase fixes the total amount of time from Dayton's arrival on the *Panama* to the start at four or five minutes (add., 149, q. 20); Overn (add., 155, qq. 31–34) at rather less than five minutes; Charles Peterson (add., 158, qq. 21–23) at rather more than five minutes; Hansen (add., 162, q. 21) at less than five minutes, while Mate Cosgrove (add., 173, q. 13), and Oiler Roy (add., 189, q. 25) do not think that the entire stop of the two vessels exceeded five minutes altogether.

Engineer Ellmore testified, under objection by the *Indiana's* counsel, that the engine-room log (add., 166, q. 7) shows that the engine started at 6.16. The log has not been produced, nor is there any effort in the record to account for its nonproduction. That would be the best evidence of the time of starting. The failure to produce it may be taken as an admission on the part of the *Mangrove* that its production would exhibit a later minute of time than that to which the witnesses testify. This certainly warrants the acceptance of the testimony of Murray and Cassard and, conceding five minutes from the stop until Dayton reached the *Panama*, the allowance of fifteen minutes as the time elapsing from Dayton's arrival on the *Panama* until the vessel started, as against ten minutes alleged by the officers of the *Mangrove*. The allegations of a number of enlisted men are clearly underestimates and may be disregarded in view of the officers' statements.

THE RATES OF SPEED.

(2) What were the respective rates of speed of these vessels while moving?

Considerable diversity of opinion exists. The testimony in regard to the speed of the *Indiana* is as follows:

Captain Taylor, who was directly responsible for the speed of the *Indiana*, explains (add., 59, 60) the very foul condition of the bottom of the *Indiana* and the serious difficulties with the boilers of the vessel (add., 74). His deliberate judgment as to the speed of the *Indiana*, from the time of the capture of the *Panama*

until her gun was fired—6.07 to 6.45 p. m.—is in the neighborhood of 8 knots. He says (add., 60):

> We moved at varying speeds during that period of twenty-five minutes or half hour. We were not in haste when we first started toward the prize, no reason then appearing for haste. Later, when the gun was fired and a doubt appeared to us whether the *Mangrove* would certainly secure her, there was a quickening of the speed for a period of a few minutes—how many I do not know—which was reduced again to her regular slow speed as soon as we were within easy gunshot, or before that—as soon as we saw that she was within our reach and grasp. I should say that the average of these speeds for that half hour ranged from $8\frac{1}{4}$ to $7\frac{3}{4}$ knots. Between those two would be the average of what we made—would be about that, from $8\frac{1}{4}$ to $7\frac{3}{4}$; in other words, in the neighborhood of 8 knots, averaging.

Lieutenant Dawson says that shortly before the capture the *Indiana* was making full speed, between 10 and 11 knots (add., 4, q. 9), but he does not say that this was kept up during the whole time.

Chaplain Cassard, who watched the *Indiana* from the *Mangrove* and had made previous observations of her speed, says (add., 45) that he estimates her speed at $7\frac{1}{2}$ knots an hour.

Commander Everett, without any very satisfactory data, estimates the speed of the *Indiana* at 10 knots (add., 113, q. 67).

3215

Lieutenant Dayton (add., 143, q. 72), at 10 knots, judging from her appearance only, and Pilot Munson (add., 191, q. 16), a witness for the *Mangrove*, on the *Indiana*, an experienced mariner and disinterested, says:

> I think she was doing her best, and that would not be over 8 knots, somewhere in that neighborhood, 8½ probably; but I could not judge of her speed exactly; I know when she was going down to Porto Rico she lagged behind the fleet, but she was doing her best when she was in the chase.

There is an attempt to prove by purely theoretical expert testimony, that of Lieutenant Dyson, from the steam log of the *Indiana*, that she was going at the rate of from 10.45 to 10.96 knots at this time (add., 198, q. 7). It appears that when ordered to make the best speed possible, which was during a portion of this time, she made 88 turns of the starboard engine and 92 of the port engine, an average of 90. This entry does not show that she made this number of turns for the whole time from 6.07 to 6.45, but that this number of turns was the maximum made under the orders to make the best speed possible. At this rate of revolution, the speed last above stated is deduced, although Mr. Dyson does not have entire confidence in the results, as, after stating these two figures, he gives 10¾ knots as about the speed made.

Admiral Taylor's testimony admits this acceleration of speed and shows that it was kept up for but a brief part of the time. The rate can not be applied to the whole thirty-eight minutes.

The testimony of the witnesses on each side is not in entire accord. Dawson, testifying for the *Indiana*, mentions the higher speed as attained at one time during the run, and Munson, testifying for the *Mangrove*, gives the lower rate as the average. We think Munson, an experienced seafaring man, a valuable witness on this point. The contention of the *Mangrove* is that the speed was about 10½ knots, while the *Indiana's* contention is 8 knots.

We think that the preponderating evidence is Captain Taylor's, as supported by Pilot Munson, in fixing the average speed at about 8 knots.

As to the *Mangrove's* speed the evidence is all from the *Mangrove*, except Captain Taylor's statement that he believes the speed of the *Mangrove* less than 6 knots when she left to go to Key West in the afternoon (add., 59).

Commander Everett says that the *Mangrove's* best speed was about 8 knots (add., 112, q. 59), and that her ordinary speed would get down to 6 knots (add., 115, 116, qq. 94–98).

Ensign Dayton fixes the speed at 8 or 9 knots (add., 143, q. 70), and Cadet Palmer at a little more than 8 knots, not much more (add., 131, q. 20).

The enlisted men on the vessel, including the engineer's force, say in general that with the sails which were up until the *Panama* was captured they made about 9 knots, but without the sails about 8.

It is explained that this maximum speed was kept up all the time by doubling the engine-room force by vol-

unteers, and while some witnesses say that this was continued after the capture, Oiler Charles Peterson says that the help by the extra firemen was while going toward the *Panama* (add., 160, q. 15). It is highly improbable that the maximum rate of speed was continued by volunteer work during all the time up to the firing of the *Indiana's* gun. The need and consequent anxiety for rapid speed was gone after the vessel's capture. There was a natural relaxation. It is admitted that the *Mangrove* went faster when chasing the *Panama* than after the capture. It is to be supposed that the speed was reduced as the *Indiana* approached. On these points, see testimony of Chipchase (add., 150, qq. 36–42; 152, q. 13), Overn (add., 156, qq. 12, 13), and Charles Peterson (add., 158, 159, qq. 24–26; 160, qq. 9–15).

Due allowance being made for the exaggeration which is necessarily expected under such conditions as these, it would seem to be safe to regard the speed of the *Mangrove* in traveling toward the *Indiana* to be not substantially in excess of what her commander calls her ordinary speed of 6 knots an hour (add., 116, q. 98).

THE DISTANCE AT 6.45.

(3) How far were the vessels apart when the *Indiana* fired her gun at 6.45?

Captain Taylor gives the distance as close aboard, one-quarter to one-half mile (add., 70).

Yeoman Murray, on the *Mangrove*, says it was about 300 yards or a seventh of a mile (add., 95, q. 45).

Lieutenant Dawson thinks that it was at least 1 mile,

possibly more (add., 28, qq. 239, 240). Mallery puts it at about 2,000 yards, or 1 mile (add., 85, q. 22).

Captain Waller, who fired the gun, differs from all the other witnesses in saying (add., 268, q. 25) that it was approximately about 3 miles.

Private Blackiston estimates the distance at about 1,000 yards, or a half mile (add., 218, q. 5), and Apprentice Lindsay at about 500 yards, or a quarter of a mile (add., 229, q. 5).

The *Mangrove's* witnesses give the following distances:

Everett, 1 mile (add., 115, q. 91).

Dayton, 1 mile (add., 140, q. 42).

Palmer, 1 mile (add., 135, q. 58).

Overn, one-fourth mile (add., 156, q. 17).

Five witnesses say a mile and five from one-seventh to one-half mile. Everett did not see the *Indiana* until after the gun was fired. It was dark, and casual observations were likely to be erroneous. Captain Taylor was watching the approach to determine the time to fire the gun, and was the responsible officer It is safer to accept Captain Taylor's statement, "close aboard," meaning one-fourth to one-half mile, than the views of the others.

DISTANCE AS SHOWN BY SPEED.

Having now reviewed the evidence on these points, the distance may be calculated according to the contentions of the two parties.

The entire time between 6.07 and 6.45 was thirty-eight minutes. The *Indiana* was approaching the

Mangrove during all this time at a speed claimed by the *Indiana* to be 8 knots an hour and by the *Mangrove* 10½, arriving at 6.45 at a distance from the *Mangrove* claimed by the *Indiana* to be "close aboard," or not of importance in the calculation, and by the *Mangrove* as 1 mile.

The *Mangrove* was still for fifteen minutes according to the *Indiana*, and ten minutes according to the *Mangrove*, making a period of motion of twenty-three or twenty-eight minutes, respectively. She moved at the rate of 6 knots, the *Indiana* says; of 8 knots, the *Mangrove* says.

These data give the distance at 6.07.

The *Indiana's* figures are as follows:

The *Indiana*, 38 minutes, at 8 knots an hour	5.07
The *Mangrove*, 23 minutes, at 6 knots an hour	2.3
Total	7.37

The *Mangrove's* figures are:

The *Indiana*, 38 minutes, at 10½ knots	6.63
The *Mangrove*, 28 minutes, at 8 knots	3.73
Distance from *Indiana* to *Mangrove*, at 6.45	1
Total	11.36

The very great difference, over 54 per cent, shows how uncertain are these calculations as a means of testing the oral testimony as to things seen; for it is as a contradiction of the *Indiana's* testimony that the *Mangrove* relies on these conclusions.

Since this brief was in proof we find that the *Mangrove* contends for a greater distance than this—13.35 knots. This we accept in lieu of our own deductions

from the *Mangrove's* evidence as a more authoritative deduction. It makes far worse for the *Mangrove's* case than the lesser distance.

Before proceeding to discuss the effect of these figures, it will be best to examine the evidence upon the other points relied upon by the *Mangrove* to establish distance, first considering:

WHEN DAYTON SAW THE *INDIANA*.

(4) How long after starting did Ensign Dayton see the *Indiana?*

Ensign Dayton says (add., 138):

> Q. 16. How long was it after you landed on board the *Panama* before the vessel got underway again?
>
> A. Not more than ten minutes. After telling the captain that he was a prize, I went immediately to the bridge and started the engines ahead. Not seeing the *Indiana*, I hailed the *Mangrove* and asked what the bearings were, and they replied (I think, Mr. Palmer), "south-southwest." I headed the *Panama* south-southwest and I saw the smoke of the *Indiana*, and soon after I saw her fighting top.
>
> Q. 17. Why was it that you asked for these bearings?
>
> A. When I left the *Mangrove* Captain Everett told me that we would both proceed back to the *Indiana*, and I inquired what direction, in order to know how to head the *Panama*.
>
> Q. 18. How long was it after that you saw the *Indiana?*

A. I can not tell; the time was very short—five or ten minutes.

Q. 19. What did you first see?

A. The fighting top.

Q. 20. Where were you at the time you saw the fighting top?

A. On the bridge of the *Panama.*

This testimony is that he got under way in not more than ten minutes, that he then asked for directions, and after that in five or ten minutes saw the *Indiana's* fighting top. On cross-examination he says (add., 145):

Cross-q. 11. What was the first you saw of the *Indiana* after getting on the *Panama?*

A. I first saw the smoke and soon after her fighting tops.

Cross-q. 12. How long was this after you had gone on board of the *Panama?*

A. Five or ten minutes.

Cross-q. 13. How long after that before you saw the body of the vessel?

A. I am not sure.

Perhaps on this it will be contended that he saw the *Indiana* five or ten minutes after he got aboard the *Panama.* This would be before he got under way (see q. 16, just quoted), while he distinctly says that he saw the *Indiana* (q. 18) five or ten minutes after he got his directions, and that that was after he got under way.

His testimony, if he means that he saw the *Indiana*

fifteen or twenty minutes after he boarded the *Panama*, is in accord with the theory of those on the *Mangrove*.

Cadet Palmer (add., 134, qq. 53, 54) says that he saw the fighting top from the *Mangrove* about twenty minutes after starting. Overn saw the *Indiana* about half an hour after the capture of the *Panama;* saw her fighting top (add., 156, qq. 4, 5), and Hansen saw her ten or fifteen minutes after starting toward her (add., 164, qq. 5, 6).

These distances, all of them a little greater than Ensign Dayton's, accord with his theory, since the *Mangrove*, being lower than the *Panama*, would see the fighting top later.

It may be deduced from this testimony that the theory of the *Mangrove* is that Dayton, from the *Panama*, saw the fighting top of the *Indiana* about twenty minutes after the capture, or at 6.27. The *Indiana's* contention is that the *Indiana* was in sight all the time.

DISTANCE BETWEEN KNOWN HEIGHTS.

(5) Ensign Dayton attempts to show the distance between the *Panama* and the *Indiana* at 6.27 by giving the height of the *Panama's* bridge and of the *Indiana's* fighting top, and showing the distance by the standard tables when the fighting top first should come into view (add., 138, qq. 21, 22). This distance is 11½ miles. This he claims was the distance between the two vessels when he first saw the *Indiana* at 6.27.

Accepting this for the purpose of calculation, what was their distance at 6.07, on the *Mangrove's* theory of

the respective speeds? Between 6.07 and 6.27 the two vessels had moved:

The *Indiana*, twenty minutes, at 10½ knots	3.5
The *Mangrove*, ten minutes, at 8 knots	1.33
	4.83
Add the distance at 6.27, stated by Dayton	11.50
The distance at 6.07 is	16.33

This is the view of Commander Everett. He says (add., 112):

> No. 61 Q. How far would you consider that such a vessel would have to be away for nothing but smoke to be observed?
>
> A. I should say 15 or 16 miles, at least.

The *Mangrove's* contentions upon the evidence as to the distance at the time of capture may therefore be be stated as follows:

By Commander Everett's estimate and Ensign Dayton's calculation, the distance was 16.33 knots.

By calculation of the speed according to the *Mangrove's* evidence, the distance was 11.36 knots.

Before discussing the probabilities of either of these distances it is necessary to review the testimony offered as to possible signal distance, as well as in regard to the distance at which other objects may be seen.

THE LIMITS OF SIGNAL DISTANCE.

(6) It must be noted that there was no controversy at all on the subject of gun signals. It was not disputed that the *Mangrove's* guns could have been heard on the *Indiana*.

The witnesses on both sides differ as to visual signals.

Captain Taylor (add., 64) says that under the most favorable conditions signal distance is possibly 8 miles; probably from 6 to 8 under favorable conditions.

Captain Waller fixes it at 8, knowing an instance of a signal being read at about 8 miles, very close measurement (add., 269).

Captain Chadwick, testifying for the *New York* (add., 99), says:

> Q. 24. At what distance could you, with the glass which you used in observing the *Panama*, have read naval flag signals?
>
> A. I should say certainly 8 miles.

Dawson says 5 or 6 miles under favorable conditions (add., 10, q. 64), but does not state extreme distance (add., 10, q. 61); Mallery says, without having made special tests, about 5 miles (add., 81, q. 26; add., 79, q. 29); Dayton between 5 and 6 miles (add., 139, qq. 31, 32); Palmer 4½ to 5 miles (add. 125, qq. 21, 22).

Some of the enlisted men of the *Indiana* had known actual instances of long-distance signaling. Quartermaster Golden (add., 248, 249, q. 6) had read signals about 8 miles with a glass. Private Blackistone had read signals at a distance understood to be 7 miles (add., 218, q. 6).

Judge Locke, in the opinion in this case (Rec., 56), states that the consensus of opinion as to signal distance is that 5 or 6 miles is the average distance and 8

miles is testified to as the limit of vision in reading day signals. This is a confirmation of Captain Chadwick's and Captain Waller's testimony and of Captain Taylor's views that signals may be read at a distance of 8 miles under the most favorable conditions. These conditions existed here.

CONDITIONS FAVORABLE FOR SIGNALING.

Admiral Taylor says (add., 65):

> Q. What were the conditions that afternoon as to the atmosphere?
>
> A. My recollection is that it was favorable above the average, as far as clearness and distinctness of distant objects went; of this I am confident.

The sun was eighteen minutes above the horizon (it set at 6.25, add., 203); it was shining from behind the *Indiana* toward the *Mangrove* and under conditions favorable to the clearest possible vision of the *Mangrove* from the *Indiana*.

We quote again Admiral Taylor's testimony (add., 64, 65):

> Q. What are the most favorable circumstances for reading signals?
>
> A. With the sun behind the observer and tolerably low down, with clear conditions of atmosphere. The light as I described it, clear conditions of atmosphere, and not too much wind.
>
> Q. When you say "tolerably low down," what do you mean by that expression?
>
> A. If the sun is shining without any cloud as

low down as possible, but if slightly obscured by haze or clouds it should be an hour before setting; these would give the most favorable conditions.

Q. In other words, do you mean as much light as you can get with the sun entirely out of your way as far as its direct rays coming into your eyes go?

A. Something more than that; for if the sun is behind you and is very high, though more light is in the atmosphere, the sun does not shine so directly perpendicularly upon the signals as when it is low down, and the best point is where it is low, but not so low as to have taken away too much of the diffused light in the atmosphere.

Munson says (add., 193, q. 46), "The northward atmosphere was very clear; to the southward it was hazy;" and Waller (add., 266, q. 7), "The atmosphere was clear seaward; hazy toward land, but the *Indiana* was between the two ships (the *Mangrove* and the *Panama*) and the land."

It is a notable corroboration of this view as to the unusual clearness of the atmospheric conditions to find that the best qualified persons on the *Indiana* uniformly considered the distance less than that which necessarily results from calculating the speed of the vessels. Thus, Captain Taylor received the impression that the distance was $3\frac{1}{2}$ to 4 miles at the time of the capture (add., 65). Captain Waller considered the distance the same (add., 266, q. 9). Lieutenant Dawson estimated it at between 4 and 6 miles

(add., 7, q. 31) and Gunner Mallery at about 4 to 4½ miles (add., 79, q. 30).

We do not contend, in the light of all the evidence, that these estimates of distance are correct. The uniform underestimate of the distance strikingly indicates the clearness of the atmospheric conditions. It means that the two vessels looked much nearer than they were. Objects could be more clearly seen than usual. Signal distance on so clear a day, with the sun's reflection on the *Mangrove*, was much farther than under normal conditions and extended to the extreme signal distance of 8 miles, more than the distance between these vessels.

VISUAL DISTANCE OF OBJECTS AT SEA.

There is some general evidence as to distances at which some things can be seen at sea.

Admiral Taylor testifies as to the possible distance to see the direction of smoke from a gun (add., 64):

> Q. You spoke of being able to see the direction that the smoke took from the gun. If you could see anything at all, wouldn't you be likely to see the direction of it?
>
> A. Oh, no. At a distance of 8 or 10 miles I should say that it would be impossible to distinguish the direction of the tongue of smoke; it would be blurred with the horizon and the natural mist. I should say it would not be possible. You would see the smoke as a cloud, but not a tongue or jet, and its direction distinctly.

Commander Everett says that a large ship the size of the *Indiana* can be seen at a distance of 12 miles (add., 109, q. 22).

Cadet Palmer testifies that boats can be seen for 5 miles (add., 126, q. 30); the smoke of a gun about 10 miles, depending upon the size of the gun (add., 126, q. 31), but not the flash of a gun at this distance and not unless within 6 miles. If very near you might see the direction of the smoke (add., 130, qq. 8–13).

Dayton thinks that a flash could be seen at a distance of 6 miles (add., 130, qq. 8–13).

THE THEORIES OF DISTANCE TESTED.

Having thus tediously gathered together the data available from the record, some conclusions may now be reached.

I. Commander Everett's and Ensign Dayton's distance of 16 miles.

A very slight calculation will show that this is impossible. The theory is that at 6.27 the two vessels were $11\frac{1}{2}$ miles apart, but met at 6.45. To find the rate per hour at which the vessels must have traveled to do this, it is only necessary to do a sum in the rule of three:

$$11.5 : 18 :: x : 60$$

x here equals the number of miles per hour to be made by the two vessels and equals 38.33.

Allowing a little more speed for the *Indiana* than that for the *Mangrove*, this would be for the *Indiana* about 20 knots and for the *Mangrove* about 18.33 knots an hour. These rates are beyond any suggestion of possible speed. This is a complete *reductio ad absurdum*.

It is none the less impossible if we suppose the time

when they were 11.5 miles apart as 6.17, instead of 6.27. This would give twenty-eight minutes for the vessels to come together, and stating the proportion again:

$$11.5 : 28 :: x : 60$$

x here equals 24.64 knots per hour, or fairly apportioning it, a speed of 13.5 for the *Indiana* and 11.14 for the *Mangrove*, rates far in excess of anything testified to as possible.

The Dayton calculation and the Everett estimate may therefore be wholly eliminated. In doing this, confidence must be seriously shaken in the general soundness of their conclusions on other points in the case.

SPEED CALCULATION OF 13.35 MILES.

II. This distance is to be tested by what was actually seen by the witnesses on the *Indiana*. It may then be compared with what Commander Everett and Cadet Palmer say as to the visual distance of various objects. From such comparison we must conclude that the *Indiana* was much nearer to the *Mangrove* and *Panama* than 13.35 miles at this time, as claimed in the *Mangrove's* brief, or even 11.36 miles.

There is no doubt from the testimony of the crowd of witnesses from every station on the ship, gathered from all parts of the world, that the *Mangrove* and *Panama* were distinctly seen from the *Indiana;* that the boat was seen in the water; that the flash of the gun was seen; that the smoke was seen not only when rising from the gun after the shot, but when shooting

out in a horizontal line from the mouth of the gun, at the very moment of the shot.

But Commander Everett says (add., 109, q. 22), and no one disputes him, that 12 miles is the distance at which a large ship like the *Indiana* can be seen at sea. Ensign Dayton's calculations confirm this. Yet the *Indiana* saw not only the *Mangrove*, a far smaller vessel, but a boat in the water. The conclusion can not be escaped that the distance was very much less than 13.35 miles.

Palmer gives 5 miles as the limit for seeing a boat (add., 126, q. 30). It can not be doubted that the *Indiana* saw the boat. He, and Dayton as well (add., 130, qq. 8–13), give the limit of seeing gun smoke as 10 miles; the flash at 6 miles; and Palmer says to see the direction of the smoke you must be very near. But we prove conclusively that all of these things were seen by witnesses. Doubt of this can not remain in the face of the proof. Thus, accepting the estimates of our opponents, the *Indiana* could not have been at a distance greatly in excess of 6 miles. The *Indiana* saw things which our adversaries admit could only be seen when within signal distance.

Our deduction of 11.36 miles, repudiated by opposing counsel's estimate of 13.35 miles from their evidence, is clearly too far for the *Indiana* to have seen what she is shown beyond doubt to have seen. As the *Mangrove* claims a greater distance, it is only the more patent impossibility that at such greater distance the *Indiana* could have seen what she actually saw. Both distances must be rejected.

3225

III. The evidence outside the speed calculation would indicate a closer distance than 7.37 miles, but the conditions for observation were evidently fully equal to those existing usually at not over 4 to 5 miles, the ordinary distance for good signaling. Eight miles, we have seen, is extreme signal distance under favorable circumstances. The *Indiana* had unusual conditions and could have read signals at the distance thus ascertained.

The *Indiana's* contention is proved by the concurrent opinion of officers and men of the *Indiana*, experienced in signaling, on deck and on bridge, from captain to apprentice, based on things seen at the time, that signal flags hoisted on the *Mangrove* at 6.07 could have been read from the *Indiana*. The calculation from speed and distance involves too many uncertain factors to be of positive value in deciding this issue; yet whatever be its value it aids to confirm the *Indiana's* overwhelming testimony by showing that the most favorable atmospheric conditions existed and that the *Indiana* was within recognized visual signal distance under such conditions.

PART V.

SOME MINOR OBJECTIONS.

THE *PANAMA'S* COLORS.

The argument will doubtless be made that signals could not have been read on the *Mangrove* from the *Indiana* at the time of the capture because, they say, the *Panama's* colors were not distinctly seen from the *Indiana*. The following signals were exchanged between the *New York* and *Indiana* (rec., 37): "5.52, *New York* to *Indiana*, 'What colors does strange vessel carry?' 5.55, *Indiana* to *New York*, 'Can not see.'"

When the first of these signals was made the *Indiana* was moving toward the *Panama*. Taylor (add., 68) says she continued to move toward the *Panama* between 5.55 and the moment of capture, 6.07, twelve minutes. If moving at 10.5 knots an hour, as claimed by the *Mangrove*, she had then moved 2.1 knots nearer than when she signaled that she could not see the vessel's colors. If traveling at 8 knots an hour, she had moved 1.6 knots. It therefore does not follow at all that the failure to see the *Panama's* colors at 5.55 shows that the colors could not have been seen or signals read at 6.07. The evidence is not indeed conclusive, since a more deliberate study of signals with a glass might have read the signals, even when a hasty glance, under the conditions momentarily existing, as shown by the time elapsing between the question and answer, failed to make out the ensign.

The advantage, too, is in favor of reading regular signal flags. Captain Taylor (add., 62) states the care taken of signal flags:

> Q. What is the rule on board ship in regard to the care taken of the signal flags?
>
> A. They are especially cared for in lockers especially prepared, usually lined with zinc or other means of making them tight, and are never left out when not in use, but are rolled up quickly and put in their pigeon holes in lockers and the tops shut down at once. This is for the purpose of keeping their colors bright, and so that the smoke from the furnaces and the dampness will not fade them. This is possible for the reason that these signals are displayed at the masthead but for a moment or two, as a rule, and are then put away again; they do not hang like the permanent flags of ship through the day and sometimes through the night, such as the admiral's flag at the masthead or the captain's narrow pennant, or during the daytime as the national colors, all of which become much stained, discolored, and faded, except special ones, which are kept for Sunday use and decoration of ship.

Commander Everett (add., 119, q. 138–141) says, also:

> No. 138. Q. How large was the ensign of the *Panama?*
>
> A. I could not give it in feet and inches, but it was the average-sized ensign carried by merchant steamers.
>
> No. 139. Q. What was the comparison with the large flags used in signaling?

A. I should say it was smaller.

No. 140. Q. How much smaller?

A. That would depend upon the kind of flag. If you mean the large signal flags in use, it was not over half the size.

It is true that Ensign Dayton makes the *Panama's* ensign 12 feet long (add., 140, q. 34), but this can hardly be accepted as correct in the face of Commander Everett's testimony. "The usual set of signal flags" furnished in the Navy are about 8 feet by 11 (add., 129, q. 48).

Some effort was apparently made to show that the gunshot from the *Indiana* at 6.45 was fired as soon as the *Indiana* saw that the ensign on the *Panama* was still flying. That attempt wholly failed.

Admiral Taylor explains the reason for firing a shot from the *Indiana* (add., 61):

> I fired it, for my own part, because I feared she would escape from the *Mangrove*. Officers who were on the bridge with me spoke of her colors not being down. This was, as I remember, an added reason for firing a gun, but, primarily, I gave an order to fire because I feared that the *Mangrove* had not completed the capture, or, having completed it, the vessel might still escape her.

Lieutenant Decker in preparatorio testifies (Rec., 40, q. 4):

> When the *Panama* headed toward us the colors in her ensign could be distinguished.

Quartermaster Golden mentions incidentally that he

made out the flag of the *Panama* before the capture (add., 246):

> Interrogatory 4. If so, state whether you saw the Spanish steamer *Panama*, and if so, state what were the relative positions of the *Panama*, the U. S. S. *Mangrove*, and the U. S. S. *Indiana* when you first saw the *Panama?*
>
> A. I did see the *Panama.* It was about sunset; we were to the southward of the *Panama*, and the *Mangrove* was to the northward of us, and between us and the *Panama*, and I made out her Spanish flag through the long glass from the masthead.

That the *Panama's* colors were not so distinct as to be altogether easy to make out is shown by the statement of Yeoman Murray (add., 91, q. 20), looking from the *Mangrove*:

> The only conversation I had with Mr. Cosgrove to my knowledge was, in the beginning of the affair, in regards to him calling me on the bridge and handing me the glasses and asking me if I could make out the flag of this ship; and as I said before, on two occasions I looked through the glasses and both times I was unable, and so was he, to make out the flag of the ship.

The weight of the evidence altogether leads to the conclusion that the *Panama's* ensign was smaller and dirtier than signal flags and that it was made out to be a Spanish flag from the masthead of the *Indiana* prior to capture.

PERSONAL CONTRADICTIONS.

Testimony has been taken bearing upon disputed questions of veracity between Chaplain Cassard and Yeoman Murray on the one hand and some of the officers and men of the *Mangrove* on the other. The statement is made by Chaplain Cassard (add., 44) that a report was made on the *Mangrove* of the *Indiana* being in sight at the time of capture. This report is denied by Commander Everett (add., 108, q. 11) and others (add., 123, 124, q. 8; 176, qq. 53, 54; 185, q. 27). Various persons on the *Mangrove* say (Ralston, rec., 25, q. 10; Everett, add, 118., q. 124; Palmer, add., 124, q. 11; Cosgrove, add., 172) that both Cassard and Murray (rec., 35, q. 10; add., 172) stated, contrary to their present testimony, that the *Indiana* was not in sight. These statements are denied by Cassard (add., 45, 53, 57) and Murray (add., 91, qq. 19–21). We do not think that anything is added to the solution of the issues in this case by any elaborate discussion of these disputed questions of veracity. They stand on substantially an equal footing. Allegations are made by those intererested on one side directly contrary to those made by parties interested on the other. The statements of the witnesses on each side rest on about the same kind of evidence. A conclusion in the case may be reached on the other evidence without going into the details of a controversy based probably on misunderstanding on both sides.

Part VI.

QUESTIONS OF LAW.

With the settlement of the issues of fact, but little remains for decision. If the court finds that visual signals could have been exchanged between the two vessels, as the *Indiana* claims, no question of law arises. If the court finds that visual signals hoisted on the *Indiana* could not be read on the *Mangrove*, there are two simple questions of law.

I. If signals hoisted on the *Mangrove* could have been read from the *Indiana*, but signals hoisted on the *Indiana* could not have been read from the *Mangrove*, is the *Indiana* entitled to share?

II. If visual signals could not have been read between the two vessels in either direction, but gun signals could have been understood, is the *Indiana* entitled to share?

SIGNALS FROM *MANGROVE* TO *INDIANA*.

The statute (R. S., § 4632) says:

> All vessels of the Navy within signal distance of the vessel or vessels making the capture, under such circumstances and in such condition as to be able to render effective aid, if required, shall share in the prize; * * *.

This act in terms makes the test whether the vessel claiming was within signal distance of the vessel making the capture, not whether the capturing vessel was within signal distance of the vessel claiming. These would be the same thing in ninety-nine per cent of all

cases. But the test, under the terms of the statute, is the ability of the capturing vessel to signal the other vessel to its aid.

Admiral Taylor very clearly states the reason of the law in language which has already been quoted (add., 73):

> But I can answer that very clearly by saying that I regard signal distance as being in the nature of things that distance at which you can perceive the calling of a consort for assistance and to be near enough to be in position to render it within a reasonable time.

The purpose of this law is to give a share of prize money to all vessels which might have been of assistance to the captor, if needed, by being in position to be summoned to active aid. That does not involve the ability to respond by a visible signal. The call is made by signal; the response by action.

GUN SIGNALS.

It has already been shown that gun signals are officially recognized in the Navy as a form of signaling, and officers have stated that while the use is unusual, they could have understood such signals. It has been proved absolutely that the sound of gun fire from the *Mangrove* was distinctly heard on the *Indiana* and that gun signals could have been freely exchanged between the *Mangrove* and the *Indiana* at this time. The *Mangrove* could have called the *Indiana* to her aid with gun signals. There is no attempt to prove that the vessels were outside of gunshot hearing.

3229

The only answer to this contention is proof that the use of gun signals is unusual, an answer quite irrelevant to the question. The right conclusion is that the *Indiana* was within signal distance of the *Mangrove* at the time, whether visual signals could have been read or not.

The crucial test is, could the *Mangrove* have summoned the *Indiana* to assistance? The law makes no question as to the particular form of summons used. A signal by sound is as good as a signal by sight, so long as it accomplishes the purpose.

Without regard to visual signals, the *Indiana* must be admitted to share upon the undisputed fact that gun signals from the *Mangrove* would have called the *Indiana* to aid. Upon this ground, as well as on the proof of visual signal distance, we submit that the decree should be reversed.

GEORGE A. KING,
WILLIAM B. KING,
Proctors for the U. S. S. Indiana.

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IN THE

Supreme Court of the United States.

October Term, 1902.

THE UNITED STATES, Appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. *Mangrove.*
} No. 24.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. *New York*, U. S. S. *Indiana*, AND U. S. S. *Wilmington*,
v.
THE OFFICERS AND CREW OF THE U. S. S. *Mangrove.*
} No. 34.

BRIEF AND ARGUMENT ON BEHALF OF THE U. S. S. *WILMINGTON.*

This case is very fully stated in the brief on behalf of the U. S. S. *Indiana*. The *Wilmington* presents a claim as one of the vessels entitled to share in the prize. The facts in regard to this vessel's participation are stated by the commanding officer of the vessel, Commander Chapman C. Todd, now rear-admiral, United States Navy, retired, as follows (Rec. 46, Q. 3):

"About 5 P. M. April 25th, 1898, while on blockade duty off Havana, Cuba, the steamer *Panama* was sighted by this vessel and reported by signal to the flagship *New York*, not as the *Panama*, but as a strange steamer. One hour later the *Indiana* was signalled to go in chase. The *Wilmington* was one mile nearer the steamer than the *New York*. At dark a search light was observed to the nd. and ed. showing steadily for an unusual length of time. The *Wilmington* stood for it when near enough the light was found to be from the *Mangrove*, it being thrown upon the *Panama*. The *Mangrove* was sole custodian of the *Panama*. The *Mangrove* was hailed and asked if the *Wilmington* had not better ac'ompany the prize to the flagship, which service was gratefully accepted. In addition to the above, the *Panama* being much superior in size, armament, and speed to the *Mangrove*, the night being very dark, it was possible for the *Panama* to make her escape, until the presence of the *Wilmington* made the seizure final and secure. It is therefore claimed that the *Wilmington* did assist in her capture and that the officers and crew are entitled to a share in the prize."

Upon this condition of fact the court below decided against the *Wilmington* (Rec. 58).

The *Wilmington* has presented no evidence in addition to that found in the record below and submits this case upon that evidence. This consists of the above evidence of her commanding officer and that of Lieutenants Bailey and Almy (Rec. 46–48) and the statements of the master, Quevedo (Rec. 14, Q. 3), the supercargo, Burgas (Rec. 7, Q. 3), and the engineer, Thompson (Rec. 10, Q. 3), that the *Wilmington* was in sight at the time of the capture.

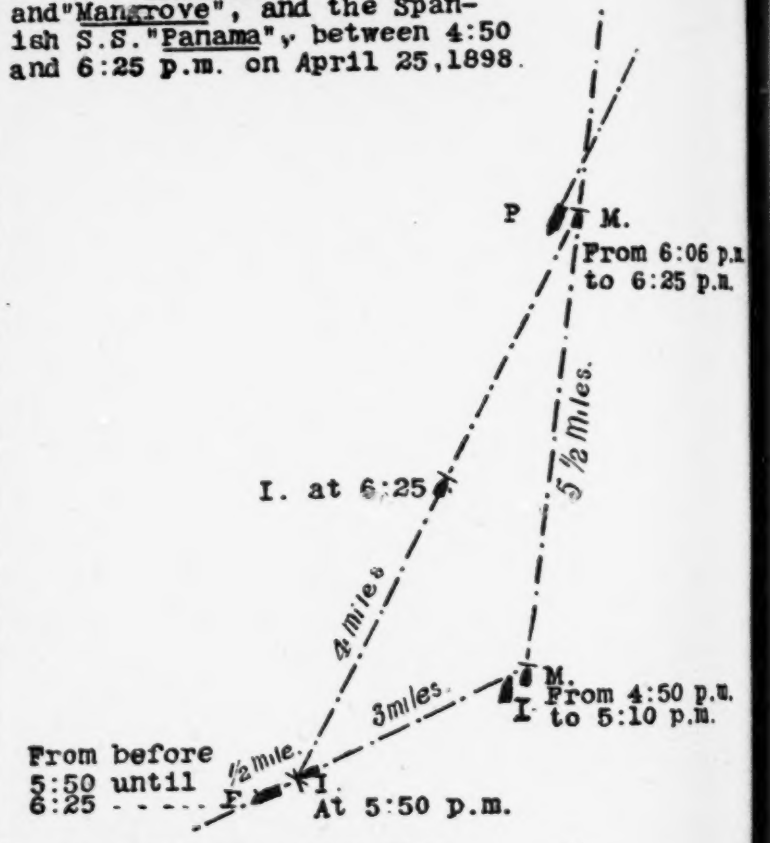
It is certain that the *Wilmington* was nearer the prize than the *New York* and should the *New York* be admitted to share, the *Wilmington* must also be admitted.

GEORGE A. KING,
WILLIAM B. KING,
Proctors for the U. S. S. *Wilmington*.

3232



Positions occupied by the U.S.S. "New York", "Indiana" and "Mangrove", and the Spanish S.S. "Panama", between 4:50 and 6:25 p.m. on April 25, 1898.



Scale 1/2 inch to 1 mile.

F. "New York."
I. "Indiana"
M. "Mangrove"
P. "Panama."



Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES,
Appellant,
vs.
THE OFFICERS AND CREW OF THE U. S. S. "MANGROVE." } No. 24.

THE OFFICERS AND ENLISTED MEN OF THE U. S. SHIPS "NEW YORK," "INDIANA" AND "WILMINGTON,"
Appellants,
vs.
THE OFFICERS AND CREW OF THE U. S. "MANGROVE." } No. 34.

Appeal from the District Court of the United States for the Southern District of Florida.

Brief for the Officers and Enlisted Men of the U. S. S. "New York," Appellants.

Statement of the Case.

These appeals run from a decree of distribution in prize, whereby the court below adjudged and ordered that the U. S. S. "*Mangrove*" was the sole captor of the Spanish steamer

"*Panama*," that no other vessels of the United States were entitled to share in the prize, and that the "*Panama*" being of equal or superior force, the officers and men of the "*Mangrove*" were entitled to the whole of the net proceeds of the prize (*Rec., p. 59*). The United States appeals from this decree (*No. 24*), contending that it is entitled to a moiety of the proceeds: (1) because the "*Mangrove*" constituted a force superior to the prize, and (2) because other vessels of the United States Navy, which participated in the capture, together with the "*Mangrove*," constituted a force superior to the prize (*Id., pp. 59, 60*). The officers and men of the U. S. S. "*New York*," "*Indiana*" and "*Wilmington*," appeal (*No. 34*), contending that they are entitled to share in the prize (1) because their respective vessels participated in the capture, and (2) because they were within signal distance of the "*Mangrove*" at the time of the capture, under such circumstances and in such condition as to have been able to render effective aid, if required (*pp. 62–64*). The "*Panama*" was captured on April 25, 1898, and at once sent in for adjudication by order of Rear-Admiral Sampson. In accordance with law (*R. S. U. S., § 4616*), claims for shares in the prize were presented by the "*New York*," "*Indiana*," "*Mangrove*" and "*Wilmington*" (*pp. 19–21; 35–37; 44–46; 48–49*). Depositions, taken on behalf of these vessels, were filed with the prize commissioner (*pp. 22–35; 38–48; 51–52; 69–75*), who made his report, finding that the "*Mangrove*" was the sole captor, and that the "*Panama*" was of equal or superior force (*pp. 52–53*). Objections were noted on behalf of the "*New York*," "*Indiana*," and "*Wilmington*." The cause was heard upon the report, objections, and evidence and thereupon the decree of distribution heretofore mentioned was entered. After appeals had been taken, this court on motion of the appellants ordered further proofs, which have been taken (*See Additional Evidence*).

Specifications of Error.

The errors of the district court assigned by the appellants and intended to be argued are these:

(1) The court erred in deciding that the "*Mangrove*" was the sole captor of the "*Panama.*"

(2) The court erred in deciding that the "*Mangrove*" was the sole vessel entitled to participate in the distribution of the proceeds of the "*Panama.*"

(3) The court erred in failing and declining to hold that the U. S. S. "*New York,*" "*Indiana,*" and "*Wilmington,*" or any of them, were joint captors with the "*Mangrove*" of the "*Panama.*"

(4) The court erred in failing and declining to hold that the "*New York,*" "*Indiana,*" and "*Wilmington*" or any of them, were in signal distance of the "*Mangrove*" at the time of the capture of the "*Panama*" under such circumstances and in such conditions as to be able to render effective aid, if required.

(5) The court erred in failing and declining to hold that the U. S. S. "*New York,*" "*Indiana*" and "*Wilmington,*" or any of them, were entitled to share in the proceeds of the "*Panama.*"

Argument.

Before proceeding to review the facts, we invite attention to the statute, which governs the admission of naval vessels to share in prizes, and to the authorities which deal with the question of participation in captures. These will show what facts are material.

Sec. *4632 R. S. U. S.* (*Act of June 30, 1864*) reads:

> All vessels of the Navy, within signal distance of the vessel or vessels making the capture, under such circumstances, and in such condition as to be able to render effective aid, if required, shall share in the prize * * *.

In the case of the "*Atlanta*" (*3 Wall., 425*) there arose a question as to what constituted participation in a capture. It appeared that the U. S. S. "*Weehawken*" and "*Nahant,*" both monitors, while within a thousand yards of one another, were attacked by the Confederate ram "*Atlanta.*" The "*Atlanta's*" fire was directed at the "*Nahant,*" alone. The "*Weehawken*" fired upon the "*Atlanta,*" inflicting damage, so serious that she surrendered immediately, and before the "*Nahant*" had fired a shot. The "*Weehawken*" claimed that she should be regarded as the sole capturing vessel and that the entire proceeds of the prize should be awarded to the captors. The district court held that the "*Nahant*" was to be considered a part of the capturing force, and that as the two monitors, together, made a force superior to that of the "*Atlanta,*" the United States was entitled to receive a moiety of the prize money. On appeal by the captors it was said:

> The mere fact that the only shot fired, and the only damage done was by the "*Weehawken*" is not decisive Other circumstances must be taken into account in determining the matter—such as the force, position, conduct and intention of the "*Nahant.*" The two vessels were known to be under the same command and of nearly equal force. The "*Atlanta*" descended the sound to attack both and governed herself with reference to their combined action. It is not reasonable to suppose that her course would have been the one pursued had she only the "*Weehawken*" to encounter. Besides, the fire of the "*Atlanta*" was directed entirely to the "*Nahant*" and of course diverted from her consort. It is possible that a different result might have followed had the fire been turned upon the "*Weehawken.*" This diversion must be considered in every just sense of the term as giving aid to her. Again the power of the shot of the "*Weehawken*" had evidently surprised the officers of the "*Atlanta,*" who found their vessel speedily disabled and their crew demoralized. The advance upon her at full speed of a second monitor of equal force, ready to inflict similar

injuries, may have hastened the surrender. It can hardly be supposed that the approach of the second monitor did not enter into the consideration of the captain and officers of the "*Atlanta.*" If the shot from the guns of one of the monitors could, in a few moments, penetrate the casemate of the "*Atlanta,*" crush in the bars of her pilot house and prostrate between forty and fifty of her men, her captain might well conclude that the combined fire of both would speedily sink his vessel and destroy his entire crew. It cannot be affirmed nor is it reasonable to suppose that any of the incidents of the battle would have occurred as they did if the "*Nahant*" had not been present in the action. We concur, therefore, in the view of the learned district judge, that in the comparison of forces engaged in the conflict the "*Nahant*" must be included with the "*Weehawken.*"

The purport of this is that a vessel which has taken no potential part in a capture, shall nevertheless be treated as a joint captor, if her presence at or near the scene of action were a contributing cause of the surrender of the prize.

Our review of the facts will be confined, as far as possible, to such as tend to establish the position of the "*New York,*" with reference to that of the "*Mangrove*" at the time of the capture, but this of necessity will involve the location of the "*Indiana.*" There is considerable conflict in the testimony of witnesses produced on behalf of the several claimant vessels. Especially is this true of estimates made of the distances which intervened between the vessels, the time when certain incidents transpired and the rates of speed developed by the vessels. The following facts appear to be established by a preponderance of testimony and by other evidence in the case:

On April 25, 1898, an American fleet, of which the vessels in question formed part, was blockading Havana and other Cuban ports. They were a little to the eastward of Havana and at various distances from the Cuban coast.

The blockade was not a close one, like that of Santiago. The blockading vessels cruised slowly back and forth over a considerable area and kept no record of their distances from shore. The "*New York*" was an armored cruiser of the first class, and by far the fastest vessel of the fleet (pp. 52, 70, *Ad. Ev.*, pp. 100). At the time she was capable of making from fourteen to sixteen knots an hour (*Ad. Ev., p. 100*). The "*Indiana*" was slow, but one of the most powerful battleships afloat (*Ad. Ev., p. 59*). The "*Wilmington*" was a small gunboat of moderate speed. The "*Mangrove*" had been a lighthouse tender, but had been equipped with a light battery. She was small and slow.

About five minutes past six o'clock in the afternoon the "*Mangrove*," then being within hailing distance, or less than one hundred yards of the "*Panama*," ordered the latter to stop, and she did so. Prior to that the "*Mangrove*" had fired shots across the "*Panama's*" bow, but she had not stopped. A boarding officer was sent by the "*Mangrove*" to the "*Panama*" at seven minutes past six and boarded her a few minutes later. Almost immediately he reported to Captain Everett, commanding the "*Mangrove*," that the vessel was the Spanish steamer "*Panama*." After an interval of about fifteen minutes, which, presumably, was consumed in examining the "*Panama's*" papers and completing the capture, the "*Mangrove*" and the prize started toward the other vessels of the United States fleet. At 6.45 the "*Indiana*" fired a shot across the "*Panama's*" bows. The latter lowered her flag at once and a prize crew from the "*Indiana*" was sent on board (pp. 20–35 [*Mangrove*]; 35–44 [*Indiana*]; 48–49, 51–52, 69–73 [*New York*]). It is safe to assume that the capture of the "*Panama*," if the placing of one officer on board of her constituted a capture, did not become a completed fact until between twenty and twenty-five minutes past six o'clock. Most of the witnesses examined give estimates of the distance

which then intervened between the "*Indiana*" and "*Mangrove.*" These range all the way from four to fifteen miles, and some witnesses for the "*Mangrove*" go to the extent of saying that the "*Indiana*" and "*New York*" were not in sight at all. Certainly such testimony cannot serve as the basis of a decision if more reliable evidence be procurable. We believe that a correct result can be deduced from logs of the claimant vessels and uncontradicted statements which show the positions occupied by the various vessels earlier in the afternoon and what each vessel did up to the time of capture.

Between four and five o'clock the "*Mangrove*" coming from the flagship ("*New York*"), brought mail for the "*Indiana*" which she delivered. Among other things this contained an order from the admiral, directing the "*Indiana*" to proceed to Key West with the "*Mangrove*" and another vessel, on special duty. Shortly before five o'clock the "*Indiana*" and "*Mangrove*" approached one another, within hailing distance and their commanding officers communicated by means of megaphones. About ten minutes past five, Captain Taylor of the "*Indiana*" ordered the "*Mangrove*" to proceed on her way to Key West, which she did, taking a course very slightly east of north. The maximum speeed of which she was capable was about eight knots (*Ad. Ev., pp. 59, 100*). Her mission at Key West was not urgent and taking into consideration the fact that it requires such a vessel about five minutes to gain headway, the likelihood is that during the interval of fifty-five minutes after leaving the "*Indiana*" she made an average speed of about six knots an hour. About half-past five the "*Mangrove*" made out a strange vessel to the northeastward, which proved to be the "*Panama.*" The latter headed directly toward her. There was no chase whatever. If the "*Mangrove*" changed her course, at all, it was very slightly and but a few minutes before 6.05 when she first called

upon the "*Panama*" to stop and stopped herself. She lay where she had stopped until 6.25. At the time of the capture she was about five and one-half miles to the northward of the position occupied by her when she left the "*Indiana.*" When the "*Mangrove*" started for Key West at ten minutes past five the "*Indiana*" got under way, an operation which, for so heavy a vessel, required from ten to twelve minutes. She took a southwesterly course towards the "*New York,*" wishing to communicate with the latter by signal. She proceeded very slowly—probably at less than six knots an hour. Almost immediately after starting, or about 5.25, she hoisted a signal. It appears from the signal logs of the "*New York*" and "*Indiana*" that at 5.38 the "*New York*" signaled the "*Indiana*": "*What is the character of the strange vessel bearing east?*" The "*Indiana*" replied: "*Merchant Steamer.*" At 5.47 the "*New York*" signaled "*What flag is stranger flying?*" At 5.50 the "*Indiana*" replied: "*Cannot see.*" Interpreting the last signal from the "*New York*" to be an order for her to get the information asked, the "*Indiana*" turned to the northward and proceeded in the direction of the "*Mangrove.*" In the thirty minutes during which she held her southwesterly course, she had covered not more than three miles. At 6.05 the "*Indiana*" signaled to the "*New York*": "*Strange vessel changed course east,*" and again at 6.06: "'*Mangrove*' *near strange steamer.*" The last signal was made by wigwag, which is the system employed when vessels are close together, or somewhere between hailing distance and a distance at which regular flag or hoist signals would be required. When at 6.06 the wigwag signal was made by the "*Indiana*" she and the "*New York*" were probably within less than a mile of each other (*pp. 52, 70, Ad. Ev., p. 98*). The two vessels had been still closer to one another, but betwen 5.50 and 6.06 the "*Indiana*" had had

time to turn and proceed a short distance on her northerly course. After getting well under way in the direction of the "*Panama*," the "*Indiana*" made the best of speed of which she was capable. She was not capable of making more than eight or nine knots an hour (*Ad. Ev., pp. 59–60*). On her trial trip with engines and boilers in perfect condition, her bottom perfectly clean and using force draught, she had developed a speed of fifteen knots an hour, but, at the time in question, her bottom was very foul, her boilers and engines were much in need of repair, and her officers had to be extremely cautious not to strain them, lest she should break down and be unable to serve throughout the campaign. It is safe to say that between 5.50 when she turned toward the "*Panama*" and 6.25 the time of the capture, she covered not more than four miles on her northerly course. Taking into consideration the fact that the "*Mangrove*" and "*Indiana*" did not proceed in opposite directions when they parted company, but took courses which made an angle of about 135° with each other, it is clear that at 6.20 the "*Indiana*" was over a mile nearer the "*Mangrove*" than she would have been had she remained where she was when she and the "*Mangrove*" parted company at 5.10. Now we have seen that at 6.25 the "*Mangrove*" was about five and one-half miles to the northward, the position occupied by the two vessels at 5.10. Hence the "*Indiana*" was less than four miles distant from the "*Panama*" at the time of the capture. This means that the "*Indiana*" was a participant in the capture, under the rules announced in the case of the "*Atlanta*" (*supra*). It is a fact, well known, that her 13-inch guns had an effective range of more than seven miles. Had the "*Panama*" attempted to avail herself of her superior speed and escaped from the "*Mangrove*," the "*Indiana*" could have sunk her or crippled her to such an extent that her capture would have been assured (*Ad. Ev., p. 60*). It fol-

lows from the above facts that the "*New York*," which was about four miles astern of the "*Indiana*" at the time of capture was within eight miles of the "*Mangrove*." The diagram at the beginning of this brief presents the situation graphically. It appears from the testimony of Captain Chadwick, Ensign Mustin, and Naval Cadet Duncan, who observed the capture from the bridge of the "*New York*," that they saw everything that occurred, and made out clearly not only the "*Mangrove*," with which they were familiar, but likewise the "*Panama*," which was a stranger (*pp. 48–49; 51–52; 69–70*). It is not surprising that the "*Panama's*" colors were not distinguished by the "*New York*" and the "*Indiana*" at 5.50. The stranger was headed straight for them. Her colors were carried on a staff at her stern. The light breeze that prevailed carried them astern, where they were hidden by her smokestack and rigging.

There is evidence tending to show that the presence of the "*New York*" and the "*Indiana*" was a contributing, if not the controlling, cause of the prompt surrender of the "*Panama*." The latter was a mail steamer. She was larger and faster than the "*Mangrove*," and equipped with a more powerful battery. She had sailed from New York on April 20, the day on which the blockade of Havana was established. She knew that war was imminent. On April 25, she had reason to know that if she encountered the blockading fleet in the vicinity of Havana, she would not meet a small steamer like the "*Mangrove*," apart from large and powerful vessels. She maintained a lookout at her masthead, to give her master the earliest notice of the presence of United States ships (*p. 17*). Ramon Burgas, an officer of the "*Panama*," when examined *in preparatorio*, testified (*p. 7*) that at the time of the capture there were two warships in sight, beside the "*Mangrove*." These being to the westward of him, he could not see their hulls,

but did see their turrets. Similar testimony was given by Gasper Thompson, one of the captured crew (*p. 10*); also by Manual Quevedo, the master of the "*Panama*" (*pp. 13–14*). The latter said that he sighted the "*Indiana*" shortly after 5.30 P. M., or about the time he discovered the "*Mangrove.*" Now in view of the "*Panama's*" superiority to the "*Mangrove,*" both in speed and armament, we are forced to adopt the conclusion that she would not have surrendered without resistance, or an attempt to escape, had she not seen that the "*Mangrove*" was supported by larger, faster and more powerful ships, which were ready to take or perhaps sink her, if she did not stop at the "*Mangrove's*" command. The "*New York*" sighted the "*Panama*" at 5.38, or about the same time that she was discovered by the "*Indiana*" and almost as soon as she was sighted by the "*Mangrove.*" Captain Chadwick, Ensign Mustin, and Cadet Duncan noted every incident of the capture. Being at the time within eight miles of the "*Panama,*" the "*New York,*" running at the rate of sixteen knots an hour, could have covered the intervening distance in a half hour, if there had been the slightest need of her assistance, and if the "*Panama*" had escaped from both the "*Mangrove*" and the "*Indiana,*" she could have run down and taken her in little more than an hour (*pp. 49, 52, 70; Ad. Ev., p. 100*). We submit that the "*New York*" as well as the "*Indiana*" is to be considered a participant in the capture (*The* "*Atlanta,*" *supra*).

Aside from the question of actual participation we must consider the right of the "*New York*" to share, as a vessel "within signal distance of the vessel or vessels making the capture" (*R. S. U. S., Sec. 4632, supra*). This requires an understanding of the various systems of signals used in the Navy and the distances at which they can be read. By night the Very system is employed. It consists of lights of various colors produced by the ignition of a package

powder projected into the air from a pistol. The court below admitted a vessel to share in a prize taken at night, without her knowledge and distant from her, more than ten miles (*The "Guido"*—not reported). By day and at considerable distances signals are exchanged by means of flags, which are hoisted on a halyard at one of the ship's masts, the flags being ranged one above the other, with the uppermost one near the masthead. Such a signal, being high above the sea and clear of the ship's rigging and smoke, can be read when the hull of the vessel is not visible. Most witnesses, who testified on the subject, express the opinion that such signals can be read, under favorable circumstances, at a distance of six miles or a little more. At shorter range, usually less than a mile, signals are made by the wigwag system, which as its name indicates, consists of small flags, waved to and fro, from the ship's deck. Under some circumstances signals are exchanged by the discharge of guns. At times this method is effective at great distances, but it is not reliable.

At the time of capture the condition of the light was most favorable for the "*New York*" to observe all objects to the eastward. The sun being near the western horizon, its rays bore directly upon the "*Indiana*," "*Mangrove*" and "*Panama*," and there was no glare to disturb the observer's vision. Looking to the westward, however, or from the "*Mangrove*" or "*Indiana*" toward the "*New York*," the conditions of light were most unfavorable. The observers would have been blinded by the direct rays of the sun. It is even possible that the other ships might not have been able to see the "*New York*," but that fact, if true, would not be material, for both of them knew where the "*New York*" was, and she could have seen their signals calling upon her for assistance if any had been made. The "*New York*" was about

eight miles from the "*Mangrove*"—a long distance for signalling to be sure—but Captain Chadwick explains that by means of a powerful telescope set up on the bridge of the flagship all of the details of the "*Mangrove*" and "*Panama*" could be seen so clearly that he is convinced that signals could have been read at that distance under favorable circumstances (*Ad. Ev., pp. 97–103*). The "*New York.*" was within signal distance of the "*Indiana.*" At 6.06 or less than twenty minutes before the capture the "*Indiana*" had signaled by wigwag: "*Mangrove near strange steamer.*" Granting that she was then two miles distant from the "*New York*" she could not have been much over four miles away at 6.25. We submit that if the presence of the "*New York*" had not been a promoting cause of the surrender, and she a participant in the capture, she would be entitled to share in the prize as having been within signal distances of the "*Mangrove*" and "*Indiana*" which were participants.

JOS. K. McCAMMON,
JAMES H. HAYDEN,
Of Counsel for the Officers and Enlisted Men of the U. S. S. "New York."

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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
THE OFFICERS AND CREW OF THE U. S. steamer "Mangrove." } No. 24.

THE OFFICERS AND ENLISTED MEN OF THE U. S. ship "New York" and others, appellants,
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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE UNITED STATES.



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BRIEF FOR THE UNITED STATES.

ARGUMENT.

I.

The first proposition for which the United States contends is that the *Mangrove* was superior in force to the *Panama*. The former was a steel screw steamer of 500 tons burden, a light-house tender, transferred from the Treasury service to the Navy for the Spanish war. She carried two 6-pounder guns, and had on board,

besides her commander, two other officers of the Navy, two noncommissioned mates, and the usual complement—in all a crew of 30 men. Her speed was about 8 knots. It seems she carried no small arms nor cutlasses, owing to delay in filling the requisition. Lieutenant Dayton, the boarding officer from the *Mangrove*, Commander Todd and Ensign Bailey, of the *Wilmington*, Ensign Mustin, of the *New York*, and Commander Winn (retired), prize commissioner, unite in the belief that the *Mangrove* was inferior in force. Captain Taylor perhaps intimates the same view.

The description of the *Panama* and her armament appears in the record, and is particularly stated in the opinion of this court upon condemnation (176 U. S., 535). She was of 1,432 tons register, carried a crew of 71 all told, had on board mounted two breech-loading guns of 9 centimeter bore ["for firing a projectile weighing about 14 pounds"] (Dayton, add. ev., p. 143); 1 Maxim rapid-firing gun on the bridge, 20 Remington and 10 Mauser rifles with ammunition for all the guns and rifles, and 30 or 40 cutlasses. That opinion condemned the vessel as "enemy property, bound for an enemy port, carrying an armament suceptible of use for hostile purposes, and herself liable, upon arrival in that port, to be appropriated by the enemy to such purposes." The best speed of the *Panama* was about 12 knots. Lieutenant Dayton, in taking her to Key West, ran her at less speed to keep in company of the *Mangrove*, and did not know from actual trial that she could make 12 knots. The record

contains little additional information. Murray, the Indiana yeoman temporarily on the *Mangrove* (add. ev., p. 90), says that Dayton, after reaching the prize, informed Commander Everett by megaphone that he had noticed two guns on the forecastle covered by canvas; that he did not know whether they were defective or complete; that he had assured the captain that the *Mangrove* would not fire into him and endanger the lives of his passengers. Everett, just before, had informed the captain, through Dayton, that if he deviated from the course set, or tried to get away, the *Mangrove* would fire into him. Dayton says (pp. 144–147) that he had only looked casually at the *Panama's* guns; that they were not loaded; that the breechblocks were not on; that he was told they were stowed away below; that he supposes the ammunition was also below, although he heard afterwards that the ammunition for the Maxim was kept on the bridge; that he has no knowledge that the guns were fit for use; that, however, the breechblocks or plugs could have been brought up quickly from below and the guns made ready for use in a few minutes by experienced men. One of the *Mangrove's* witnesses, C. Peterson (add. ev., pp. 158–159), testifies that he saw a sailor of the *Panama* taking a tarpaulin off one of her guns, but he was stopped by an officer in uniform. Another witness for the *Mangrove*, Cosgrove (Id., p.171), testifies to the same effect.

The United States has endeavored to locate some of the officers of the prize to obtain further testimony on

the condition of her armament and rate of speed, but without success.

On the foregoing facts it might be asserted that if the *Mangrove* and the *Panama* are to be regarded as two units on the high seas unrelated to other vessels and to all the attendant circumstances, the strength of the *Panama* was equal or superior; but the surrounding facts are an essential part of the problem. In the first place, the opinion in the condemnation case considered the force of the *Panama* as potential rather than actual; as placing her in the category of enemy merchant vessels, not covered by the executive exemption, rather than in the class of combatants. Under her postal relations and her contract attaching her to the Spanish naval reserve, she was armed first for defense in time of peace against all the remote contingencies which mail carriers must regard—against such contingencies at any time, doubtless—but not for flagrant resistance to a recognized belligerent. She was armed to protect her mail service against wanton or unauthorized stoppages and searches if there should be disturbances or lawlessness along her route, rather than to resist legitimate arrest by a declared enemy of her own flag. The opinion considers the armament as susceptible of hostile use chiefly because of Spain's right to impress the vessel if she reached Havana. She might then be strengthened and sent out as a cruiser, and in view of the contract relation her merchant character did not require us to place a hostile instrument in the enemy's hands. The court

views her armament in the light of her intent in hastening to her country's port and of the purpose to be subserved on arrival there, and not as an effective hostile instrument at the time of capture. She was after all a merchant vessel and presumably peaceful in disposition toward any legitimate vessel of war until her merchant character should be changed upon appropriation by Spain at Havana. The modification of the merchant character by her postal armament justified condemnation, but did not turn her into a unit of fighting force while pursuing her merchant voyage. Thus it was because the armament was not only for defense in the postal service, but was susceptible of positive hostile use if Spain obtained possession, that the vessel was condemned. She was "intended in the event of war to be used as a war vessel," as the court says, but not until Spain had appropriated her.

In the next place, when the *Panama* left New York on April 20, 1898, her owners and officers knew very well that war was imminent; the public tension, the preparation for the event which occurred, the assembling of our vessels of war in Cuban waters, were notorious facts; it was manifestly the eve of war and blockade. The *Panama* necessarily desired and endeavored to make for her port of refuge as straight and as fast as she could. She naturally sought to evade discovery and elude arrest. That the exact situation and the risks were in the minds of her officers is shown by the testimony of Reyan. (Tr., p. 17.) Evidently she proceeded fearfully and as secretly and rapidly as

possible. No intention whatever to use her armament and fight appears anywhere. The substantially uniform statement is that there was no resistance, although one or two witnesses expressed the suspicion that the *Panama* at one point intended to ram the *Mangrove*. There is no testimony showing that the *Panama* sought to escape before or after capture or swerved from her straight course at all times for Havana. On April 22 the blockade of the north Cuban coast east and west of Havana was proclaimed, and the blockade as an actual fact already anticipated and provided for was duly established. On April 25, the date of capture, Congress declared that war existed on and after April 21. On April 26 the President, recognizing this declaration, proclaimed adherence to the modern rules respecting neutrals and blockade, and extended to merchant vessels and mail steamers certain exemptions from capture and condemnation, which were held by this court not to protect the *Panama*.

The war vessels off the Cuban coast were waiting and watching for the *Panama*. She was well known, her voyages were regular, and they were expecting her. Captain Chadwick says (add. ev., p. 103), "I think everybody was on the lookout for her."

This, then, is the situation: Our war vessels are hovering off the Cuban coast on their blockading beats about Havana and to the east and west of that port. They are stationed generally from 7 to 20 miles from the coast line in that vicinity. Some of the vessels here involved, with others, are about to be detached for

a cable-cutting expedition elsewhere, but have not yet received their final orders. Among their other duties of watch and ward, they are specifically expecting this merchantman to appear on her regular trip. She, proceeding straight for the harbor mouth in a generally southwest direction, after rounding Florida, and without changing her course as the capturing vessels appeared (see testimony *in preparatorio*, Tr., pp. 9, 12, 16), by paramount necessity runs deliberately into the jaws of the squadron and is peacefully intercepted and brought to, knowing that her only hope of safety is dissipated. That hope was to steal into Havana unobserved, availing of some fortunate chance. To go elsewhere at any point after leaving New York was practically impossible, her consignments and engagements being what they were and her sailing being known; at least the risk of the Havana destination was fairly debatable on the many chances of delay in the actual declaration of war, and that risk was taken rather than the similar risk and certain loss of secret flight to some distant and unexpected destination. So her only part was to run straight for Havana and take her chances. When she came to this group of war ships she instantly acquiesced in her fate, as doubtless she had intended to do from the beginning if her chances failed. She did not resist, in fact; she never intended to resist: Her armament was in all senses, literal and figurative, out of commission for the emergency which confronted her when she was sighted, intercepted, and rounded up by the vanguard of the

forces of the United States, engaged, as she then well knew, in open war against her nation. When she saw the national flag and character of the *Mangrove*, she perfectly knew the hostile status and purpose, and it did not need the shot and challenge to make her larger size and stronger potential armament powerless. She knew the *Mangrove* was a war ship, as the testimony *in preparatorio* states, and did not speculate on the difference in size, speed, and armament. The *Mangrove* only changed her course slightly to meet or intercept the *Panama;* there was no "chase" in reality. Nor would the *Panama*, as the event proved, take the risk of calling on her slightly greater speed against the *Mangrove's* guns. She had passengers, mails, and property to save. Irrespective of the other war ships (which, in fact, she saw; see testimony *in preparatorio*), she was aware that if she dared to engage the *Mangrove* within 25 miles of Havana, even though there was no ship in sight, and even if she escaped from the *Mangrove* she invited almost certain doom. The noise and duration of a fight would probably bring help from the squadron which she justly suspected was somewhere across her path over the remaining distance to Havana. She would rightly believe that in other directions there was a cordon around her and many chances against her. If such a fight had been undertaken, when probable retribution came passengers and lading might not prevent stern punishment for such unheard-of temerity. Her crew were the ordinary men of a merchantman, not articled to fight, not

3247

skilled in the handling of guns. The *Mangrove* was officered from the regular service and manned from that service, and from the Light-House Service, also superior to merchant service in efficient training and discipline for hostilities. Her regular character and efficiency the *Panama* would divine at a glance.

But the other war ships were in fact seen by the *Panama*, emphasizing in the minds of her officers some such train of reflection as the above, and leading them, if they had ever paltered with the temptation to fight or run, to leave the guns covered and dismantled and the ammunition and small arms undisturbed below.

On the facts proved or admitted, or within judicial cognizance, and on irresistible inferences of the reasoning of the *Panama's* officers as they foresaw and faced their dilemma, it seems to me impossible to contend that she was equal or superior in force. Her officers' reasoning issued in their handling their vessel as a peaceful merchantman only, ignoring the summons to stop until, by its imperative repetition, they realized that the chance of running for it to Havana was gone. Even this concession is against the master's deposition that he stopped his ship after the first shot—meaning, of course, before the second. The *Mangrove* merely headed her in, so to speak, toward a result predestined from her course to Havana and her character as merchantman among warships blocking the end of her journey to safety; and the *Mangrove*, being nearest, simply intercepted her first, while one of the other vessels was hurrying up for active cooperation if

necessary. All the attendant circumstances—the known imminence of war, the assembling of our squadrons, the high probability of blockade and hostile cruising, the flag of the United States at her peak, and the warlike trim of the *Mangrove*, the sight of the *Indiana* and *Wilmington* between themselves and Cuba—had the effect of reducing the nominal force of the prize to practically nothing in reality and by comparison. It was at the critical moment, simple merchantman, unarmed for such work, as against "a dog of war," however small its size. Their postal armament was not uncovered; the ammunition and small arms remained below; they never dreamed of resistance or flight if they could not slip through unobserved to Havana. If this is not so, why did they not either fight or run away on the theory of superior force, heavier armament, or greater speed?

The notion and consequences of relative force—inferior, equal, or superior—grew up in early days when there were many privateers as well as King's ships on each side, and fights were frequent. Greater reward was properly given for great gallantry with small relative force, meaning actual and intended fighting force. I think no one in those days would have dreamed of invoking this principle to settle the case of a merchant vessel armed only against "assailing thieves," but now facing several hostile cruisers. I am sure no reported case can be found which furnishes any precedent.

The statement in the *Atlanta* (2 Spr., 251) that the court will consider the means the prize possessed and

3248

not the use she made of them surely is not applicable, for there all the vessels captured and capturing were war vessels. The Confederate cruiser *Atlanta* had gone out to seek and challenge the Union monitors, and in the resulting pitched battle was overcome so quickly by one of her opponents that she was forced to strike before she could bring all her heavy batteries into action, as she desired and intended to do. It was of this entirely dissimilar situation that the remark stated was made.

Even if the *Mangrove's* theory of inferior force at the instant of capture be assumed, its effect is immediately avoided by the fact that she steamed straight to her approaching consort and shipped the prize crew which she could not furnish herself. The Government argues that the strict statutory condition of signal distance is met; that the *Panama* was shorn of her force by the visible presence of the other ships, and by all the attendant circumstances surrounding her voyage and destination; that one at least of the other war ships, possessing guns of effective weight and range, seeing the merchantman and the so-called chase, hurried up in active cooperation. But further, the Government contends that here is no vague constructive joint capture, no mere general association in a blockade or expedition, but immediate and real aid. On the *Mangrove's* own assertion of her weakness the capture was not sure and safe until her threatening bearing had partly deluded and partly coerced the *Panama* into the presence of the *Indiana* and the prize crew had been furnished.

II.

The second position for which the United States argues is that another vessel or other vessels of the Navy were within signal distance of the *Mangrove* at the time of capture, and therefore were joint captors and manifestly reduced the relative force of the prize. This proposition (in relation to the right to participate in distribution) is fully presented by the arguments made on behalf of these vessels, and the United States adopts those arguments as part of its own case. We contend that if other vessels are within signal distance, and therefore entitled to share, this is on the theory that the other vessels are joint captors cooperating or ready to cooperate by reason of their presence in effective condition within the statutory distance, and that the result necessarily is an augmentation of the effective force of the capturing vessel so as to make it superior to the prize even if otherwise it would not be so. This effect of being within signal distance, and therefore entitled to share, upon the question of relative force, will doubtless be denied by all the naval captors. We reserve that point for a later portion of the brief.

Here we commit the contention that other vessels were in fact within signal distance to the arguments on behalf of the *Indiana*, *Wilmington*, and *New York*. Yet it will be well to consider briefly some general principles involved.

Under the British statutes the captors' share of a prize went to the "takers." The elastic development

3249

of the law out of precedents and by the great admiralty judges construed and enlarged the import of this word. King's ships in sight were entitled to share, but not privateers without some actual cooperation, because in the one case there was always a presumption of an intent to engage if necessary; in the other case, not so. "The officers commanding His Majesty's ships have at all times the *animus capiendi*." (*The Galen*, 2 Dod., 19, 31.) Privateers were free to act as their interests might dictate. Mere sight from the masthead was not sufficient. It was never doubted that active cooperation insured the right to share. The test of being in sight was applied with just liberality. This test made joint capture without actual participation in the engagement or stoppage.

From this liberality was developed the constructive and more remote joint capture which admitted to share all vessels engaged in the same general object, as blockade or expedition, even if not really within sight. This extension of this principle was afterwards somewhat restrained. But the general doctrine of numbering among the takers as joint captors those who contributed to the intimidation of an enemy or the encouragement of a friend is well established. For instance, in the *Drie Gebroeders* (5 C. Rob, 339) a privateer was the actual captor, and a meritorious one, as the object was not effected without considerable exertion. The King's ship was in sight, but merely watching in readiness to give aid if there were resistance. There was no resistance, because it was "deemed

hopeless from a view of the assistance which was to be expected from the cutter." And the King's ship was given an interest because of the general presumptions of law in her favor.

In the case of the *Sparkler* (1 Dod., 359), Sir William Scott states the rule thus:

> The rule of law upon this subject is that a ship in sight at the time of capture is entitled to share in the prize from that circumstance alone, unless the case happens to fall within one of the exceptions to that general rule; such as the circumstance of steering a directly contrary course, for that might defeat an interest which would otherwise have been supported upon the ground of being in sight. It may seem hard upon the actual captor that a vessel which was perhaps scarcely in sight, and contributed nothing to the capture, should be entitled to an equal share of the benefit with another ship which may perhaps have been engaged in a long pursuit of the prize, and may likewise have sustained a very severe conflict. Where exertions of this kind have been made by the actual captor, and no assistance has been afforded by the vessel claiming to share as joint captor, the case may very properly be called an extreme one. But according to the statement contained in the allegation, there was in this case an actual contribution of assistance on the part of the *Armide*, for that ship is asserted to have joined in the pursuit with the *Nimrod*. Such a claim is not to be described as an extreme one, or as one which the court

3250

> would strain hard to reject; it is rather entitled to be considered in a favorable point of view. For the law is willing to favor the interests of all who contribute their endeavors to capture the vessels of the enemy.

This is a typical statement of the proper distinctions in such a situation. It is fully applicable to the facts of the case in hand, and, as I shall endeavor to show, the principle which Sir William Scott invoked upon this subject, when not extended to those who are at a distance and merely associated in the general purpose of the operations, is justly to be invoked under the language of our own statute. It is reasonable that those whose presence and cooperation manifestly contributed to the result, because their support aided in intimidating the enemy and encouraging the friend should be admitted to share, and the learned judge in his reiteration of that doctrine states and enforces the rule of justice on the subject. He rendered many judgments to the same effect. (See cases cited in Story's Principles and Practice of Prize Courts, and in other authorities, *infra*.)

An instance of the extreme length to which constructive assistance is carried is seen in the case of the *Forsigheid* (3 C. Rob., 311), in which the fleet was admitted to share, although the capture was made out of sight and without any concurrence in chasing. The captured ships were not seen by the fleet until they were in the possession of the actual captor. I quote a part of the judgment, as it illustrates the

development of the subject in the learned judge's mind:

> Undoubtedly different principles apply in cases where ships are associated by public authority on a common service, and where they are not so associated together. * * * It is essentially necessary in such cases [that is, where "not so associated together"] that the party should have been in sight at some part of the transaction, though it is not required that it should be at the moment of capture, because the impulse and impression on the mind of the enemy who is to be intimidated, or of the friend who is to be encouraged, may remain, notwithstanding the intervention of a headland or fog, and may therefore bring it within reach of that principle of law on which constructive assistance is built. But in cases of ships associated together by public authority the same principle does not necessarily apply. * * * The fleet so associated is considered as one body unless detached by orders or entirely separated by accident, and what is done by one, continuing to compose in fact a part of that fleet, enures to the benefit of all.

And on this principle the fleet was given an interest in the prize.

In the *Harmonie* (3 C. Rob., 319) a statement was made which illustrates a feature of the present case. There, it is true, there was an actual order to bring all prizes up to the squadron. There was an inner tier of smaller ships on a blockade, and this service was alleged to be separate, so as to give the actual captor

near the shore an exclusive right. But it was naturally held that this was not a distinct employment, the court remarking:

> Of course ships attempting to break the blockade *ab extra* would fall first into the hands of the large vessels; those that attempted to violate the blockade by egress would be intercepted by the smaller ones within. Directions were given to them to bring all such vessels breaking the blockade up to the fleet. Until that was done it was not properly a capture, but detention.

Here the circumstances create a situation amounting to such directions, for the *Mangrove* was not able to handle her prize without thus driving her up to the squadron and reporting in order to obtain a prize crew.

In *La Melanie* (2 Dod., 122), the court said:

> There can be no doubt that sight alone is between King's ships generally sufficient to establish a claim of joint capture. By sight I understand the being seen by the prize as well as by the captor, and thereby causing intimidation to the enemy and encouragement to the friend. I am not aware that one of these will aid without the other. But sight, even if proved in the fullest and most satisfactory manner, does not universally give a right to share.

The court then states circumstances which rebut the presumption arising from sight, as, for instance, when the ships are lying in a harbor, unable to get out, or where, being at sea and having it in their power to render assistance, they are unconscious of what is

going on and are pursuing a different course. "In such circumstances they can occasion no terror to the enemy nor afford any encouragement to the friend, and therefore they are justly deemed not entitled to a share of the benefit."

It is evident that in the development of the law in England the terms "sight" and "signal distance" were considered as practically interchangeable. For instance, in *Le Bon Aventure* (1 Ac., 211, 238) the use of both terms runs through the final paragraph of the judgment:

> It is obvious that if he had been *within signal distance*, he might easily have been checked. * * * We can not absolutely say the *Albion* was not *within signal distance.* * * * A third reason has been lately urged * * * that of association throughout the whole transaction * * * comprising both chases, since it commenced *within sight* of the fleet * * *. Upon this principle * * * it is necessary to inquire * * * whether a vessel commencing a second chase *in sight* of a fleet, etc.

If there was any "chase" here in the ordinary sense, the *Indiana* certainly took part in it. The English doctrine on this subject is to be found in *L'Amitie* (6 C. Rob., 261):

> With respect even to privateers the act of chasing, if continued for any length of time, will be sufficient to found a title of joint capture. It will not be necessary that the joint chaser should actually board the prize; it will be enough if there is an *animus persequendi* suffi-

> ciently indicated by the conduct of the vessel, and not discontinued.

In that case the vessel claiming to share "was in chase at the time of capture, and had been in chase before." And so it is in the present case.

The leading case defining captors, constructive captors, and the limit of rights founded on a common enterprise is the *Vryheid*. (2 C. Rob., 216.) In the *Nordstern* (1 Ac., 128), Sir William Grant expressed the doctrine of association as follows:

> Where a capture is strictly made in association, the parties so associated shall be admitted to share. We are now called upon to extend this principle to a very considerable length indeed, and give an extremely vague, constructive meaning to the term association—

which he declines to do.

I have cited the foregoing English cases because, even where not altogether relevant to the present situation, they nevertheless throw light upon the principles involved.

The doctrines and distinctions of the English cases are fully reviewed in Story's Notes on Prize Courts (Pratt's edition, London, 1854, pp. 98–108). Several American cases, to which I shall presently refer, discuss the principles in connection with the language of our statutes. The phrase of the act of 1800 (par. vii, sec. 6, act April 23, 1800, 2 Stat., 45, 53) was "in sight;" that of the act of 1862 was "within signal distance" (act July 17, 1862, 12 Stat., 600, 606, sec. 3, par 4); that of the present law (act June 30, 1864,

sec. 4632, R. S.) is "within signal distance * * * under such circumstances and in such condition as to be able to render effective aid if required." "Signal distance" might be regarded as having a broader meaning than "in sight," because including audible as well as visible signals. On the other hand, assuming it to be restricted to the visual signals of ordinary use, it might be viewed as a stricter phrase than "in sight." Apparently Judge Betts, in the case of the *Anglia*, has this idea in mind, the restrictive notion, when he intimates that the two terms are the same in effect.

> In my opinion the phrase "within signal distance," employed in the act of 1862 in place of the prior expression "within sight," may have been substituted as carrying within it a like import with the antecedent one, with perhaps a stronger significance, that proximity of position in relation to the capturing vessels must be such as to render intercommunication with the different consorts practicable and intelligible. The mere variation of phraseology in a revision or reenactment of statutory law is not regarded as a revocation of the law, unless plainly so expressed.

This view is, I think, correct, and makes proper to cases arising under our own law the application of the English doctrines. (The *Anglia*, Blatchf. Pr. Cas., 566.) In that case the court comments upon the limitation of prize law as to the rights of constructive captors and joint enterprise under the English decisions, and holds that the language of the act of 1862 "affords no indication that the established rules in regard to joint

3253

captors in prize cases are intended to be changed. * * * It will not be implied constructively that assistance has been rendered by a ship not palpably contributing to the capture of another, unless she was within signal distance of the one making the prize, in circumstances which might have justified the capturing ship in demanding and expecting her assistance and the prize vessel in apprehending her interference." One of the vessels claiming to share was stationed 16 miles distant from the place of capture, and the other one was not proved to have been any nearer to the scene of the transaction. In the present case, at least one of the vessels claiming to share palpably contributed, and was present within signal distance or in sight under circumstances which justified the capturing ship in expecting assistance and the prize in apprehending interference.

Judge Sprague, however, in the *Ella and Anna* (2 Spr., 267), appears to be of the view that the change from sight to signal distance was of consequence. "The change made by substituting signal distance for being in sight by our statute of 1862 is far from being immaterial, and English decisions are not authorities to be implicitly followed." But his test is that the presence of the other vessel should be really effective, for he says:

> Reason and policy dictate that no part of the prize should be taken from those whose vigilance, energy, skill, or courage achieved the capture, to be given to others who contributed no assistance and were so remote as to render it

> very doubtful whether a request for aid could have reached them if aid had been desired.

And again:

> It is a great privilege to any vessel to be allowed to share in a prize which she has not actually aided in capturing. Such indulgence is not to be granted without good reasons. It ought not to be enjoyed by any vessel unless she is within such distance as gives assurance that she would render actual assistance if called upon, and could afford encouragement to the captors by their knowing that such assistance was at hand.

A note to that case (as reported in Federal Cases, No. 4368) states that this construction by the court of the act of 1862, requiring the ability really to cooperate and excluding the general notion of joint enterprize, led to the act of 1864, which expressed that test by the words "under such circumstances and in such condition as to be able to render effective aid if required."

The case of the *Cherokee* (2 Sprague, 235) shows the effort of vessels merely cooperating in the blockade of Charleston Harbor to share as joint captors. They saw the commencement of the chase only; they did not start in pursuit, but remained at their anchorage. The pursuer and pursued were entirely lost sight of, and the capture was effected 35 miles from the blockading squadron. Under these circumstances the court justly denied the right of the squadron to share, applying the restrictions on the doctrine of constructive joint capture. The English decisions are reviewed carefully and

the evolution of the rule traced that a King's ship being in sight was constituted a joint or constructive captor in law. The court finds that the enlargement of the doctrine of constructive capture by association had never been part of our own law, and that the English courts admitted that their decisions had sometimes gone far beyond the just interpretation of the prize grant. The express provision as to signal distance in the act of 1862 is taken by the court as meaning that Congress fixed the limits of constructive joint capture, and excluded the doctrine of an association in a common enterprise. The subject was also considered in the *Ella and Anna* (*supra*) and the same result adjudged under similar circumstances.

We contend that the effect of the foregoing authorities is that "within signal distance" is not essentially a narrower and stricter term than "in sight;" that the English cases, viewing as joint captors those who contribute by their active endeavors or by their near presence to the result, encouraging a friend and intimidating an enemy, are relevant authorities in the present case; that the American cases and our development of statute law simply result in excluding that remote class of constructive joint captures because of association in a common enterprise, whom the English courts themselves came to look on doubtfully as not justly entitled to share; that in this case, in which the enemy saw the other vessels and the actual captor, on the record, either did see them or could have seen them and signaled to them, and in which one at least of the other

vessels not only endeavored to cooperate by going at once in joint pursuit of the prize, but actually did cooperate by coming up with the captor and captured almost immediately after the event, and by furnishing a prize crew—in this case, I say, and under such circumstances it is not to be doubted that another vessel or all the other vessels claiming to share are to be taken as joint captors within the meaning of our own statutes and decisions.

III.

The Government finally contends that participation in the capture and the consequent right to share establishes necessarily the effective superiority of the capturing force. What is the meaning of the recognition of the right of other vessels to share? Is it not that being within proper distance, able, ready, and willing to render aid, they give support to the actual captor, and add their resources to his strength in a comparison of force? It makes no difference whether all are called the capturing force, or the distinction is preserved between the actual captor and the joint captors—in either case the force of the enemy is to be measured against the combined force of those who could have concentrated against him if required. But the captors will argue otherwise: They will point out that section 4630 provides that the net proceeds shall be decreed to the captors when the prize was of superior or equal force to the *vessel or vessels making the capture;* that section 4632 simply brings in vessels within signal distance as entitled to share

but not as part of the capturing force—of "the vessels making the capture." They say that proceeds are "decreed to the captors," and that the vessels within signal distance share with the "captors." This logic is strained and ignores any meaning in the idea of a joint captor or constructive captor, unless he actually takes part in the engagement or shares in stopping the vessel. This view repudiates the significance of being in sight or within signal distance, and brushes aside the necessary import in the statute (sec. 4632) of the condition that vessels entitled to participate in the proceeds must be able to render effective aid. All these ideas justly signify that the presence of the other vessels has essentially contributed to the capture. This is the reason, and the only reason, why they are entitled to share. The last portion of section 4632 shows this thought very clearly. In the case of privateers or vessels not in the Navy only the vessel or vessels making the capture are entitled to share. That term includes only vessels present at and rendering actual assistance in the capture. In the present case the *Indiana* would fairly come even within that test. But the meaning of those clauses is that in the case of vessels of the Navy the old presumption in favor of their readiness to take part and their effectiveness against the foe and for the friend attaches to national vessels, and constitutes them joint captors in the full meaning of that term if within signal distance, even if they did not render actual assistance.

In the case of the *Cherokee* (*supra*) Judge Sprague, who, as has been shown, viewed strictly the subject of

constructive capture, uses the following language to enforce his exclusion of those claiming to share who were merely embarked in a joint enterprise, but were not in any sense within the statute:

> But our legislature having provided that one class of those who had been decreed constructive captors shall be entitled to share, and thus given them an express statute right, if the court shall introduce another class of constructive captors, and hold that they are "ships making the prize" within the meaning of the statute, then the result which has already been stated will follow. This, as we have seen, Congress could not have intended. The first class of grantees, therefore, can embrace only actual captors; and this conclusion is in accordance with the fair and natural import of the language of the statute.

The phrase quoted by Judge Sprague, "ships making the prize," is taken from the act of 1862 (sec. 3, par. 4), and is the equivalent of the language of section 4630, "the vessel or vessels making the capture."

It is clear that while Judge Sprague holds that the second class of constructive captors, by association merely, are not entitled to share, he views the first class of constructive captors, namely, those within signal distance, as part of the ships making the prize; and when he says that the first class of grantees can embrace only actual captors, he by no means intends to imply that they are the only ships making the prize.

But in the case of the *Atlanta* (2 Spr., 251) this question was considered further, and doctrines laid down as

applicable to the particular circumstances of that case, which will be invoked here by the captors. The question in that case, as stated clearly in the original syllabus (see note 1 to report in Federal Cases, No. 619), was as follows:

> What cooperation constitutes a vessel one of "the vessels making the capture" for the purpose of determining the relative force of the captors and the prize?

The decision is thus stated in the present syllabus:

> A war vessel within signal distance of another making a prize is entitled to share in the prize under 12 Stat., 606, sec. 3 [act of 1862], but is not a part of the "capturing force," within the meaning of section 2, providing that where the capturing force is superior the prize shall be divided equally between the United States and the officers and men making the capture.

The facts were that the Confederate ironclad *Atlanta* went out to attack the United States monitors *Nahant* and *Weehawken*, supposing herself superior to their combined force. When they met, the *Weehawken* turned, followed by the *Nahant*, and both vessels ran toward the *Atlanta*, which had directed her fire wholly against the *Nahant*. The *Weehawken* fired her shots with such effect as to compel surrender. The *Nahant* had reserved her fire for closer range, and at the time of surrender was equally distant with the *Weehawken* from the *Atlanta*. It was held that the *Nahant* was a part of the capturing force, and that together they were superior to the *At-*

lanta, and half the prize should go to the United States. In rendering this judgment the court said that it was given as the result of the special circumstances of the case, without attempting to establish a test for determining who in other circumstances should be deemed actual captors. The part of the decision holding that a war vessel within signal distance is entitled to share but is not a part of the capturing force related to a gunboat present within signal distance. The language of the opinion as to the gunboat is as follows:

> It is admitted by the officers of both monitors that the gunboat *Cimmerone* was all the while within signal distance and acting under the orders of the senior officer, and consequently entitled to participate in the distribution as being "within signal distance of the vessel or vessels making the prize." The only question as to her is whether she is to be counted in as part of the capturing force—that is, whether she is to be deemed one of the vessels making the capture, within the meaning of the statute, when we are comparing the force of the captors with that of the prize for the purpose of determining whether the proceeds belong wholly to the captors or are to be divided between them and the Government. * * * I have no difficulty, therefore, in deciding that I must exclude the *Cimmerone* in determining the relative force of the captors and the prize. In like manner I exclude the gunboats of the rebels, which were within signal distance of the *Atlanta*, but kept aloof.

I submit that it is improper to draw any general inference from the court's words on this point in the case of the *Atlanta* and apply them to the very different case now presented. For in the latter case the gunboat was in all senses a helpless spectator of the engagement, as were the Confederate gunboats. They "kept aloof." The *Cimmerone* could not have coped with the *Atlanta*, and even as aiding its stronger consorts, would have done a foolish and fatal thing if it had challenged a shot from the Confederate ironclad. It was not present in a condition to render effective aid, which is the present test of the law and contemplates that all such vessels participate in the capture as well as share in the proceeds of the prize. At that time the gunboat was entitled to share, although not fit to participate in the capture, because the act of 1862 did not include the condition of being able to render effective aid. In the present case, with this new test in the law restricting the right to share, we are dealing with ironclads of our Navy within sight or within signal distance of the actual captor and the prize, one of them hurrying to render the aid which she was effective to give and which turned out to be actually necessary. I contend that the distinction between the capturing vessel or vessels of section 4630 and vessels within signal distance of section 4632, drawn from the circumstances of the *Atlanta* case, should not be applied to the present facts and constitute a fixed rule of prize law.

In this court (*The Ironclad Atlanta*, 3 Wall., 425) the decision was that it is proper to consider as the

capturing force not only the flagship leading, actually firing and by her firing doing the only damage, but also any other vessel which by an obviously great force, by its conduct and plain purpose to come at once into the engagement, may have hastened the surrender. This statement controls in principle the case in hand. The entire meaning of the *Atlanta* case is epitomized in the words of the commanding officer: "The first shot took away the desire to fight, the second the ability to get away." Naturally, the consort being eager to join and prevented only by the sudden completeness of the victory, the court held that she had in contemplation of law taken part in the capture In the state of public feeling at the time the United States did not present any opposing argument in this court, her counsel withdrawing from the court room. The captors' counsel asked the very question which will be asked in the different circumstances of this case: "Will it be said that the presence of other vessels has a great moral influence on the result (even if these other vessels do not take an active part), by discouraging the one side and encouraging the other?" The circumstances there were most unlike the present case, and yet the principle to be applied here is clearly indicated in the opinion of the court:

> The mere fact that the only shot fired and the only damage done was by the *Weehawken* is not decisive. Other circumstances must be taken into account in determining the matter, such as the force, position, conduct, and intention of the *Nahant*. * * * It can hardly

3258

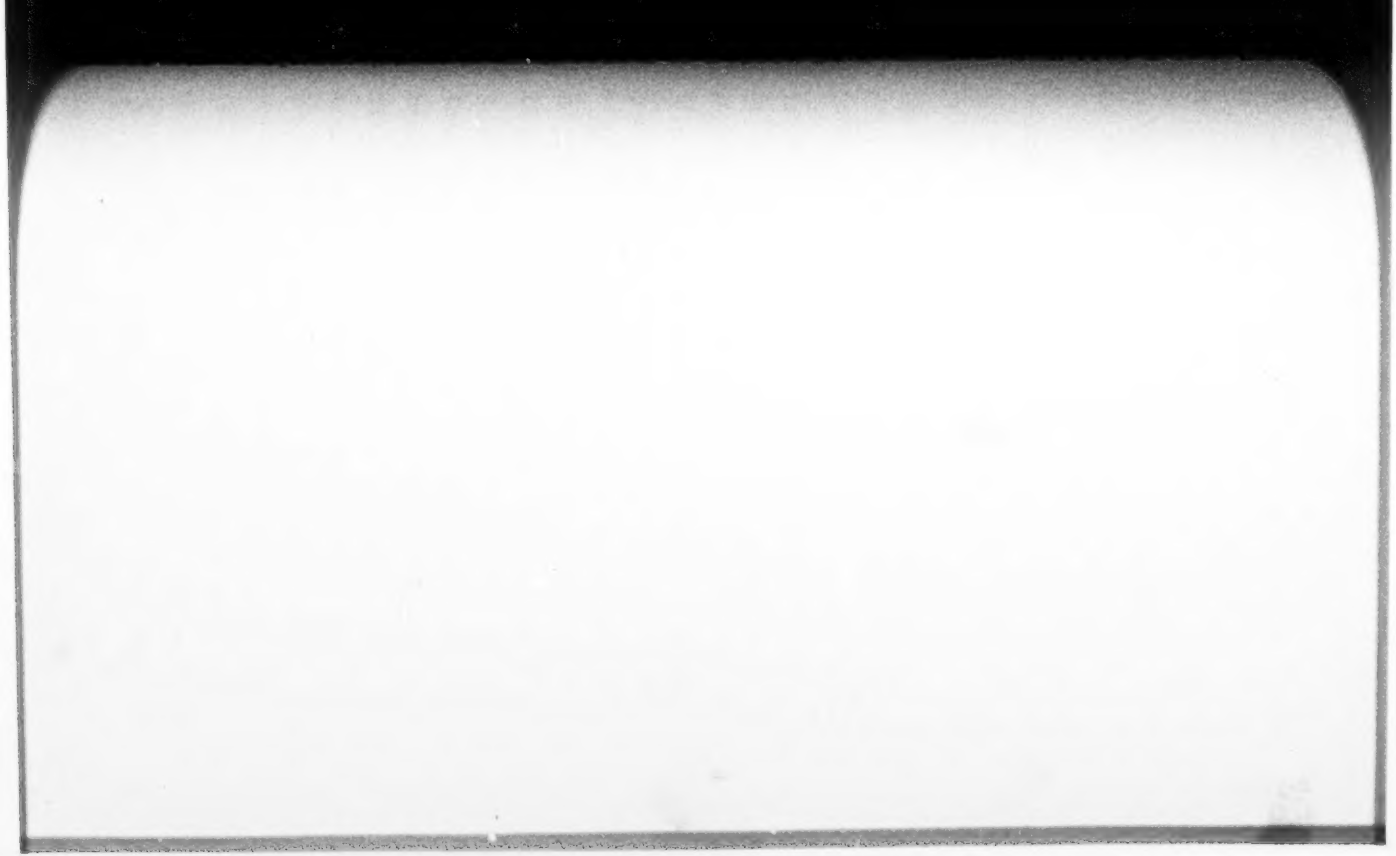
be supposed that the approach of the second monitor did not enter into the consideration of the captain and officers of the *Atlanta*.

The point as to the gunboat, unable to enter this battle of giants, was not raised or considered in this court. Surely a particular conclusion, natural in the special facts then presented and unchallenged, can not rule this situation, in which the strong vessels of the group were at hand, one of them hastening to complete if necessary the subjugation of a noncombatant merchantman, and actually aiding not only by its presence in force but by the supply of a prize crew.

We submit that the decree of the court below should be reversed, and judgment be pronounced that the force of the prize was inferior, and that the United States is entitled to a moiety.

HENRY M. HOYT,
Assistant Attorney-General.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, *Appellants*,
v.
THE OFFICERS AND CREW OF THE U. S. S. *Mangrove*. } No. 24.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. *New York*, U. S. S. *Indiana*, AND U. S. S. *Wilmington*,
v.
THE OFFICERS AND CREW OF THE U. S. S. *Mangrove*. } No. 34.

Reply of U. S. S. *Indiana* to the Brief of U. S. S. *Mangrove*.

Some matters stated in the brief filed on behalf of the *Mangrove* in answer to the *Indiana's* claim require a reply.

Signals by Boat Flags.

The *Mangrove* maintains that the test of signal distance in this case is the ability to signal by small boat flags, since the *Mangrove* had these, but no large signal flags. This asserts the principle that signal distance is a term whose meaning is varied in accordance with the signalling ability of the vessel.

It is first to be pointed out that this is wholly inconsistent with the denial by the *Mangrove* that signalling

by gun signals is a proper test. If the question is, whether with the means at hand the *Mangrove* could have called the *Indiana* to her assistance, then gun signals are to be considered as much as boat flags. Gun signals are an officially recognized method of long distance signalling in emergencies; boat flags are officially used for signalling at short distances but have no recognition or use for long distances. The *Mangrove* can not logically admit boat flags as a test of signal distance and deny the admission of gun signals.

The *Mangrove* asserts that an unusual method of signalling is to be adopted as the test because it was available. Any such principle admits gun signals.

The principle is wrong. The test is whether the *Indiana* was within signal distance by any known method authorized by official regulation. Signal distance is the distance at which authorized signals can be understood, not the distance at which the special form of signals in the possession of the capturing vessel can be understood. The statute fixes a uniform rule, not a variable rule.

The right of the *Indiana* to share depends upon her position and not upon the instruments for signalling possessed by the *Mangrove*. As well might the absence of an efficient signal officer be the test as the absence of efficient signal apparatus.

Admit the *Mangrove's* point as well taken and then suppose the positions of the *Indiana* and *Mangrove* reversed. Then because the *Indiana*, supposed to be the capturing vessel, had large signal flags, the *Mangrove* could share in the prize as within signal distance of those flags, although it is said that under the existing conditions, the *Indiana* has no share because the *Mangrove* lacked such usual equipment. The larger and better fitted vessel, less in need of help (this position being supposed) must divide its prize; the smaller vessel, lacking equip-

ment, apt to require aid, is treated as independent of outside help.

The statute has made a simple but rigid test by a fact which does not often admit dispute. Disputes should not be encouraged by adding complexity to the statutory condition.

Effective Aid.

It is denied by the *Mangrove* (appellees' brief, pp. 6, 7) that the *Indiana* was in position to render effective aid, if required. The appellees contend that the *Indiana's* distance made her non-effective. The words: "Under such circumstances and in such condition as to be able to render effective aid, if required," do not make the distinction of distance as claimed by appellee. The sharing distance is signal distance. This being settled, the next question is the effective condition and circumstances of the vessel. Was she aground, a wreck, or without motive power? Using the word of the statute, was she an effective vessel? In determining this question, the matter of distance, elsewhere determined by the statute, is not to be reintroduced. No case can be cited, of all the many discussing signal distance, where any such further qualification based on distance is approved or even urged.

How can it be contended that a battle-ship of the most powerful modern armament, including 13-inch guns, in sight at a distance of about seven miles would not be effective aid to a vessel of the size and armament of the *Mangrove* in capturing a vessel of superior force? It is not questioned that the *Panama* was a swifter vessel than the *Indiana*, as she was of the *Mangrove*, but the moral effect of the *Indiana's* guns, high-powered and effective at a great distance, as well as their physical potentiality, can not be overestimated. We have pointed out in our brief the

evidence (add. 158, q. 14; add. 171, q. 7) showing that the covers were taken off the *Panama's* guns and replaced. We have also shown (brief, pp. 39–41) the testimony of the officers of the *Panama* that they saw the *Indiana* in the distance prior to the boarding of the *Panama* by Dayton. Lieutenant Decker (rec. 40) says:

"The chase was within range of our eight- and thirteen-inch guns. She could not have escaped us if she had evaded or resisted the *Mangrove*"

Lieutenant Dawson (rec. 42) says:

"The prize, from the time she was sighted, was within easy range of the guns of this ship, and could not *have* possibly have escaped us *whether* success she might have had in evading or resisting the *Mangrove*."

Chief Yeoman Murray (rec. 43) says:

"Had the prize successfully resisted or evaded the *Mangrove*, she could not have escaped the *Indiana*, as she was within range of the guns of the main battery."

Under these circumstances it seems quite unnecessary to discuss in detail whether the presence of the *Indiana* within signal distance was under such conditions as to render effective aid, if required. American battleships have a notable record of efficiency and this can not be denied to the *Indiana* because deficient in speed alone.

Movements Prior to 6.07.

Our learned adversaries have discussed (appellees' brief, pp. 27–34) at great length in their brief the movements of these vessels prior to 6.07, when the capture took place. The uncertainty of their data is frankly disclosed. What possible advantage can result from this? The critical time was 6.07. The issue is whether the vessels

were in signal distance at that minute. It is not contended that at that time their distance was less than seven or more than fourteen miles and we know that the *Mangrove* was still and the *Indiana* moving toward the *Mangrove*. The best evidence of their distance at 6.07 is the testimony of the witnesses as to what was seen and the evidence of their movements between that and 6.45. This has been produced and fully discussed.

Now it is proposed to throw light on the problem by calculating the positions of these three vessels at 6.07 from their movements between 4.30 and that hour. No such calculation can be made with sufficient exactness to aid in settling a dispute reduced already to a difference of only seven miles. The data are all too indefinite in the following as well as other particulars:

(1) The minute when the *Mangrove* left the *Indiana*.

(2) The speed of the *Mangrove* until she saw and made haste for the *Panama*.

(3) The hour when she increased her speed to reach the *Panama*.

(4) Her exact course during any part of this time—this resting solely on oral recollection.

(5) The *Indiana's* exact speed,—"full speed 5.05, slow speed 5.48; then full speed, with orders to make 85 turns" (add. 202), with no evidence of the number of turns until after 5.48, or of the resulting speed.

(6) The exact course of the *Indiana*.

(7) Consequently, the angles of the *Indiana's* and *Mangrove's* courses.

The issues, now sufficiently difficult, are confused by seeking to throw light upon them from data which possess far more uncertainty than those relied on to prove their movements after 6.07.

Reversal on Questions of Fact.

The appellee's brief cites a decision of this court in regard to reversals of decrees of the lower court on questions of fact and maintains that such reversal is adjudged only upon very clear evidence of mistake on the part of the court below. In the case cited, this court heard the case on the same record as two courts below. The rule governing its action is stated very clearly in the syllabus (*The Grace Girdler*, 7 Wall. 196):

"This court will not readily reverse in a case of collision depending on a mere difference of opinion as to the weight of conflicting testimony, where both the District and Circuit Courts have agreed."

Even there three judges dissented. Here is an entirely different record. This court takes up the case for the first time without the benefit of a hearing below on this record; consequently the rule cited has no application.

Mistakes of Witnesses.

We admit that our witnesses have made mistakes. No witness examined at length on either side can have stated all the facts with exact accuracy. This record puts the court in possession of a more nearly complete and a more accurate story of the afternoon's work than remains in the memory of any single witness. The right conclusion is reached not by dwelling on the errors of any particular witness, but by discerning the hypothesis which most nearly reconciles the testimony derived from the several sources,—the oral testimony of things seen at 6.07 from (1) the *Indiana*, (2) the *Panama* and (3) the *Mangrove*, (4) the evidence of record, (5) the testimony as to motion and speed, and (6) the proof of possible signal distance.

Our case rests primarily on the overwhelming evidence of persons on the *Indiana* of what they saw. It is impossible that they could have seen these things at the distance claimed by the *Mangrove*. Supplementing this is the conclusion of all these experienced witnesses that, seeing what they did, they could then have read flag-signals. Whatever may have been the exact number of miles, they all agree that the things they saw made them certain that they could have read signals. Then the evidence of motion and speed and of recognized long-distance signalling, although not in itself conclusive, displays the credibility of the story of the witnesses and the reasonableness of their opinion.

Against this, proof of individual mistakes is of no avail.

The Number of Witnesses.

Comment is made (appellees' brief, p. 55) upon the fact that with a crew approximating five hundred but nineteen persons on the *Indiana* were called as witnesses. Attention has already been called (*Indiana's* brief, p. 29) to the fact that these are representative men from various places and capacities on the ship.

Other witnesses, after such a number, would have been purely cumulative. A rehearsal of the story by as many more would not add to proof already conclusive. There is a limit to the proper protraction of a record. The presumption when so many give concurring testimony is that others who were in like situation would also concur if called.

The varying and separated conditions under which the testimony was taken preclude also the possibility of collusion among the witnesses and make conclusive the presumption that others would corroborate their testimony.

The Rule of Distribution.

The decree of the court below awards the entire amount of the prize to the *Mangrove*. In our assignment of error, we maintain that the *Indiana* should be included, but we do not allege error in the grant of the entire prize to the captors. This position is common to the *Mangrove* and the *Indiana* and is fully argued in the *Mangrove's* brief (pp. 2–5). We maintain that the "vessel or vessels making the capture," described in R. S. § 4630, for comparison with the force of the prize, constitute a different class from the vessels "within signal distance" of the "vessel or vessels making the capture" described in § 4632. The comparison under § 4630 in determining relative force and consequently the amount of prize to be distributed is with the *Mangrove* alone. The *Indiana* does not come in under that section, but as a vessel within signal distance under § 4632. The argument is fully stated in the *Mangrove's* brief and it is unnecessary to repeat it here.

GEORGE A. KING,
WILLIAM B. KING,
Proctors for the U. S. S. Indiana.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

October Term 1900.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. *New York*, *Indiana* AND *Wilmington*, Appellants, v. THE OFFICERS AND ENLISTED MEN OF THE U. S. S. *Mangrove*, Appellees.	No. 445.

BRIEF FOR THE APPELLEES, ON MOTIONS FOR LEAVE TO TAKE FURTHER PROOF.

Libel was filed by the United States Attorney in the District Court for the Southern District of Florida, on the 11th day of May, 1898, and a decree of condemnation was rendered May 27, 1898, against the steamer *Panama*. The *Panama* appealed to this court, where the decree of the court below was affirmed, February 26, 1900.

The issue between the appellants and appellees in this case of the *Mangrove*, was joined between all the parties June 1, 1898. That issue is, as shown by the pleadings, Whether the *Mangrove* alone is entitled to the proceeds of the prize—the *Panama*—or whether the other ships, the *Wilmington*, the *New York*, and the *Indiana* are entitled to share with it.

All the depositions and proof of all the claimants had

been filed by and on June 1, 1898. See record and certicate of clerk, hereto attached.

Before decree in this case counsel for the *Mangrove* was before the Judge in Chambers, and called his attention briefly to a few points, but practically submitted his case on brief. See his affidavit attached. Mr. Hayden, of counsel, as it was understood, was also before the Judge prior to the decision of the case (see affidavit hereto of clerk), and all parties filed briefs. See same affidavits.

The report of the Prize Commissioner was filed October 3, 1898, giving all the prize to the *Mangrove*.

The case remained in *that attitude for nearly two years*, until June 15, 1900, when the court rendered the decree appealed from.

All parties "chanced the decision" on the evidence they had taken, and now at this late date motions are made in the hope that the appellate court will give them what does not appear to have been asked of the court below, "another chance." In support of the motion, counsel for the *New York* say, page 13:

> "The standing interrogatories upon which (the depositions) are relics of the days of sailing ships and smooth-bore guns. It is not surprising that they should have failed to draw from the witnesses full and complete statements of all the circumstances attending the capture."

Admitting solely for the sake of argument that this statement could be made as to the interrogatories *in preparatorio*, appearing on pages 4, 5, and 6 of the record, the depositions in the present case were taken upon the ten interrogatories propounded on pages 21 and 22 and elsewhere in the record. These are modern, comprehensive, and skillfully adapted to elicit all the information needed in the decision of questions like that at bar, be-

tween rival ships claiming to share in prize under the present statutes of the United States.

The counsel for the *Indiana* and the *Wilmington*, in their brief, to account for this motion at this date, quote on pages 25 and 26, the circular from the Secretary of the Navy of date September 10, 1898, in which the Department notifies commanding officers and others entitled to prize money, etc., that their claims will be "promptly settled by the Auditor of the Navy Department, through the Navy Department, and that the employment of an attorney is entirely unnecessary."

But every commanding officer must have known that this circular did not refer to disputes as to the right of different ships to share in prizes, and that the auditor could only settle rights and shares in unlitigated cases.

Besides, these parties had *all begun their litigation* with each other in the District court *four months before this circular was issued.*

Again, one year after this circular all the present attorneys for the claimants participated as counsel for them in the argument, viz., November 3, 1899.

Grounds of Motion.

Counsel for the motions seem to find it very difficult to set forth succinctly their grounds. The captain of the *Indiana* makes his motion, and "for cause of this motion he respectfully refers to the affidavits of himself and others, herewith presented," and seeming to fear that the facts presented may not be sufficient, he adds: "and to the considerations set forth in the brief and argument of the counsel filed therein."

Counsel for the other motion show for their ground that "by reason of the exigencies of the naval service, they were prevented from adducing full and adequate proof while the cause was pending," etc., without any at-

tempt to show that there were any exigencies upon the *New York, Indiana* or *Wilmington* that did not to an equal degree affect the *Mangrove*.

In reply we contend:

a. That the officers and crews of all the claiming vessels had exactly equal opportunities, and that all of them enjoyed every facility. It was sailor-man against sailor-man. The captain of each ship was furnished with exactly the same interrogatories; each commanding officer testified himself, and took the testimony of such others of the officers and crew as he deemed necessary. All this in the spring of 1898. Depositions were sworn to before the captain, or other officer, and there was no limit to the power to take testimony, except the belief, after full consultation, that all the evidence had been taken that was available or requisite.

b. Every ship's company put in such extracts from the log of the vessel as would help to make out the ship's case. These logs were all made up by officers who were naturally alert for prize money, and of course they omitted nothing from the records they were keeping that would tend for such claims as they might make.

c. These logs are official records of the *res gestæ*. They give a contemporaneous history of facts and are far more reliable than any expressions of opinion, even if made at the time. *A fortiori*, these logs are more reliable than opinions formed from memory.

d. Every captain seemed to rest his case largely upon the extracts from his log. The logs of the *Indiana* and the *New York* are set forth in their respective claims, and repeated by witnesses. All these logs are entitled to fair consideration. Some contradictions in other testimony are produced, but these are largely as to matters of opinion. Messrs. McCammon & Hayden began their argument, page 12 of Brief, by saying:

> "The depositions of the nine officers taken on behalf of the *New York*, *Indiana* and *Wilmington*, and the logs of these vessels for the watch during which the *Panama* was captured, are in substantial accord and all are in direct conflict with the eleven depositions of the *Mangrove's* officers and men. The court below accepted the *Mangrove's* evidence as true and rejected all of the evidence offered by the other vessels as untrue."

Our contention is, that—as will appear by examination—the decision of the court below was made mainly upon the facts disclosed by the logs of the *Indiana* and the *New York*.

The Law.

Before discussing the facts or the opinion of the court below, we call attention to what we conceive to be the true meaning of the cases cited for the motions, premising that while motions to take further proof are, in prize cases, treated more liberally than are applications at law for a new trial, yet that the true rule is that no court below will permit suitors to deliberately take chances with the court, "and if unsuccessful, then to move for a new trial (or leave to take further testimony) on the ground of surprise."

The maxim *vigilantibus non est dormientibus leges subveniunt*, has some field of operation in every court which has a reasonable desire to administer justice methodically.

The rule to be gathered from all the cases, as laid down by the Supreme Court long after the decision of every case cited by either of the counsel for appellants, is as follows:

> "An order for further proof is always made with extreme caution and only where the ends of

justice clearly require it." *The Gray Jacket*, 5 Eall. 342.

Referring to the old cases, some of which were cited for the motions.

In the *Atalanta*, 3 Wh. 409, new testimony was ordered by this court, the appeal being by the captors from a judgment in favor of Foussat, claimant, Foussat being the only witness for himself. The court was prepared to reverse the case, because of suspicious circumstances connected with his evidence, but because the proceedings had been very irregular and Foussat was in condition to explain these circumstances by outside testimony, it was ordered that this evidence be taken. This is no precedent for an application in a case like this, where no irregularities appear, where each party had the fullest opportunity, all its witnesses being on board ship, to examine them, where each did examine all that were deemed necessary, and where, never having, so far as the record shows, asked below for the privilege of taking more evidence, the defeated parties appeal and then, after looking over the record, conclude themselves to ask in this court, for the first time, the privilege of taking another chance.

In the case of the *London Packet*, 2 Wheat. 372, where no testimony was allowed, no facts are considered.

In the case of the *Grotius*, 8 Cr. 456, the court ordered further evidence, because only one man had been put aboard as prize master, and there was a conflict between the evidence of this man and the witnesses for the ship, as to whether there had been a capture, the captain having been left in charge of the navigation of the ship and of her papers.

In the schooner *Adeline*, 9 Cr. 244, the captors were appellants, and there were many claimants; the court

ordered the property of eighteen released and six condemned, and allowed further testimony as to others whose national character and proprietary interest did not distinctly appear. Some of the claimants *were residents of France*, and the court said:

> "As, indeed, the master has not been able to swear directly as to the proprietary interest of the cargo, but simply says that the goods were, as he presumes and believes, the property of the shippers or the consignees, perhaps in strictness, *further proof might have been required in the court below* as to the whole cargo. It was not, however, moved for there by the captors, *and as we are satisfied as to the claims* which we shall restore, it would be useless now to make such a general order."

Here the court clearly intimates that a different rule applies to a lower and an upper court, and it is distinctly held that where the court is "satisfied" as to claims, it will not allow further evidence.

Counsel have quoted the case of the *Frances*, 8 Cr. 348, but did not quote the same case when it was up in 8 Cr. 335, where further proof was denied when "the original evidence is very strong to prove that the shipment made of D. and F. (which was the issue) was entirely a consignment.

In the case of the *Frances*, Graham's claim, 8 Cr. 348 which was cited, further proof was allowed because the credibility of affidavits made was impaired by the non-production of letters mentioned in the affidavits. In that case the claimants' own evidence had suggested the necessity of further testimony.

In another case arising out of the capture of the *Frances*, 8 Cr. 354, cited by counsel, the question turned on whether a consignment and an accompanying bill of lading vested the property in the consignee. Claimant

under the peculiar circumstances of that case was allowed further evidence, in order that he might show that he had accepted the conditions named in the first consignment before the capture and on the arrival of another vessel. This was undoubtedly a liberal ruling, but the testimony was not in any sense cumulative. It went to another point.

After all the cases which have been cited by counsel had been decided, this court, in the well-considered case of the *Sallie Magee*, refused an order for further testimony largely, as will be seen by the opinion, because "between the filing of the claim and the time when the decree was rendered, more than two years elapsed; there was time to communicate repeatedly with Rio," whence the proof was to come.

That case is precisely in point. Two years and more elapsed in the case at bar, between the time of the taking of the testimony, May, 1898, and the trial in the summer of 1900. The parties in the *Sallie Magee* could communicate with Rio at that time, say once in two months. In this case, so far as appears from the proofs, the parties could all the time since the Spanish war have communicated with their counsel once a week, and they had for many months the power to take new testimony from those on shipboard every day in the week.

The court said, in the *Sallie Magee*, after citing authorities:

> "The result is always in the discretion of the court, and that discretion is controlled by the circumstances of each case. The order is made with great caution, because of the temptation it holds out to fraud and perjury."

In this case the new testimony the appellants ask to introduce could come only *from persons directly interested*, and therefore under temptation, if such a thing could be.

Besides, the testimony to be taken could only be cumulative. The court adds to the sentence we have used above, "the order is made only when the interests of justice clearly require it."

This language was re-affirmed in the *Grey Jacket*, 5 Wall. 342.

The Facts.

Do the interests of justice require that in this case the cumulative evidence of other officers and men on board the *New York*, *Indiana* and *Wilmington* be admitted? We deny that Judge Locke decided the case upon the testimony of the eleven witnesses of the *Mangrove* against the nine officers of the other three vessels and their logs, and insist that he did not count witnesses, but weighed testimony and gave consideration almost entirely to the logs of the vessels, as the captains themselves seem to have done when they put them in. In these logs the facts are stated, and there the case would rest even if the thousand and more witnesses on the claiming vessels should give their opinions.

The inevitable inference to be drawn from the logs of the *Indiana* and the *New York*, coupled with testimony coming from the *Wilmington*, the *Indiana* and the *New York*, are:

1. That neither the *Wilmington*, *New York* or *Indiana* was in signaling distance of the *Mangrove* at the time of her capture of the *Panama*. This appears from the efforts that were being made just before the capture to ascertain the colors of the *Panama*. Signals were being exchanged between the other three vessels, but none were sent or attempted to be sent, to the *Mangrove*, which was nearest to the *Panama*. This was because the *Mangrove* was out of signaling distance. Events show *that at that time this fact was recognized*.

2. That the *Indiana* and the *Mangrove*, from the speed at, and the time within, which they were travelling away from each other prior to the capture, must have been from fourteen to sixteen miles apart at the time of the capture, and not only because of this great distance but because of the direction of the wind day-time signaling was absolutely impossible.

3. That a like conclusion must be reached by estimating the distance travelled by the *Indiana* and the *Mangrove* in approaching each other, after the capture, until the *Indiana* fired its shot across the bow of the *Panama*.

4. That the shot fired across the bow of the *Panama* by the *Indiana*, more than half an hour after she was captured, is a fact totally inconsistent with the claim now set up by the *Indiana*, that her officers knew all that had been going on between the *Mangrove* and the captured vessel.

I. As to signaling.

At 5.25 Lieut. Almy, officer of the deck on the *Wilmington*,

> "sighted a merchant steamer to the n'd and e'd and signaled to the flagship *New York* general signal 6216 compass N. E. (smoke of a steamer is seen in the direction indicated by compass signal)," p. 46, Rec.

This, of course, being so exact, is from the log of the *Wilmington*. The flagship *New York*, having received this signal,

> "made signal to the *Indiana* 'What is the character of the strange vessel bearing east?' At 5.45 *Indiana* replied, 'Merchant steamer.' At 5.47 *New York* signaled to *Indiana* 'What flag is the steamer flying?' At 5.50 *Indiana* answered 'Can not see.' At 6.06 *Indiana* signaled this ship 'Strange vessel changed course east.' At 6.06 *Indiana* signaled this ship

'*Mangrove* near strange steamer,' the *Indiana* being then distant not more than 400 yards from *this ship*."

This is given by Ensign Henry C. Mustin, aide to commander-in-chief on the *New York*, at pages 51 and 52 of the record. Now the capture of the *Panama* by the *Mangrove* took place at 6.07 P. M. Commanger Everett says:

"When Ensign Dayton went aboard it was 6.07, and I so entered that fact in the ship's log book." Record, p. 33.

The witnesses on the *Panama* testified that it was just before six o'clock when the capture took place.

Now here it is evident from these facts that from 5.38 until 6.06 this signaling was going on between the flagship and the *Indiana*, the purpose of which was to ascertain the nature of the strange vessel which had been reported. It was the duty of the *Indiana* to give the information desired; if she was so far from the *Panama* as to be unable to make out the colors, it was her plain duty to inquire of the *Mangrove*, which was then near the *Panama* and could have given the information; and this the *Indiana* undoubtedly would have done if at that particular moment it had seemed to the officers on board that they could obtain for the commander-in-chief in that way the information he was seeking. The fact that no log of the *New York* or of the *Indiana* shows any effort to establish signal communication with the *Mangrove* at that time, ought to be conclusive to show that the latter was out of signal distance.

Note also that during all the time of this signaling and until 6.06 the *Indiana* kept on sailing away from the *Mangrove*, never suspecting from what it could see that there was any prize in sight.

And we ask in this connection especial attention to the reasons given by Captains Taylor and Chadwick, in their affidavits supporting their motions, when explaining why the colors of the *Panama* were not visible from the *Indiana* when the *New York* was making her inquiries.

Captain Taylor in his affidavit says:

> "That the failure to see the colors of the *Panama* at 5.55 *was rather natural*, as the flag was blowing out but little, etc. etc. * * * * Whereas signal flags in many instances may be read off with ease, when the ensign at the staff, especially if not blowing out, may be difficult to make out with certainty."

And Captain Chadwick says, pages 4 and 5 of McCammon & Hayden's brief.

> "The affiant was able to observe the movement of the *Panama* the *Indiana* and the *Mangrove*, but could not make out the colors of the *Panama*, because there was very little wind at the time and *such as there was blew from the Panama to the New York, so that the colors may have been end on.* * * * * *The affiant could have read the signals at this distance, had the wind been such as to blow the signal flags in a direction normal to the line of sight.*"

Now if when the *Panama* was coming towards the *New York* the wind was nevertheless strong enough to *blow her flag towards the New York*, how much stronger would have been the force of the wind upon any signal flags the *Mangrove* might have waved when she was going at the rate of eight or nine miles directly against that wind? Of course it would have been just nine miles stronger than the wind which put the flag of the *Panama* end on, rendering it plainly impossible for the *Panama*, even if distance had permitted, to signal because the wind was not, as Captain

Chadwick says, "such as to blow the signal flags in a direction normal to the line of sight."

Judge Locke in his opinion, page 56 of the Record, says:

> "Signal distance must be determined by the circumstances and requirements of the vessels at the time."

And again, on the same page, he says:

> "What such distance is, is a more difficult question. I fail to find any evidence upon that point in any recent case, but in the case of the *R. E. Lee*, 1 Lowell, p. 36, after careful consideration and examination of the testimony in the case and of every case cited therein, it was considered that from five to six miles was the average distance at which flag signals could be read, and eight miles was testified to by one of the witnesses as being the utmost limit of vision in reading naval day signals."

Thus, we contend that the affidavits themselves, upon which the motion for the new trial in this case is made, supplement the decision of Judge Locke, and show conclusively the correctness of his decision, by reasoning not employed by him, because the explanations these officers give, of the failure to signal or to attempt to signal the *Mangrove*, at the distance she was, were not before him.

II. As to the speed at, and the time within, which the *Indiana* and the *Mangrove* were traveling from each other, Judge Locke's opinion mainly turned on this point. He said:

> "At 4.30 P. M., as shown by the official log of the *Indiana*, which is considered the most reliable testimony upon that point, signal was made from that vessel to the *Mangrove* to come within hail and to

proceed to Key West after receiving the mail. Judging from all the testimony it is fair to presume that it was a little before 5 P. M., at the time the *Mangrove* left the *Indiana*, and at ten minutes past five the *Indiana* went ahead at full speed, at about ten miles an hour, toward the south'ard to communicate with the flagship. At about 5.25 P. M. the *Wilmington* discovered smoke to the northeast, and reported the same as a steamer to the northeast, to the flagship. At 5.45 P. M. the flagship inquired of the *Indiana*, then approaching from the north'ard, 'What is the character of the strange vessel,' and the reply was, 'Merchant vessel.' The inquiry was then made? 'What colors does the strange vessel carry?' The reply of the *Indiana*, at 5.55 P. M., was 'Can not see.' Five minutes later, or at six o'clock, the *Indiana* appears to have turned to the northeastward and made full speed toward the *Panama* (the prize) and the *Mangrove*. Seven minutes later the prize surrendered and was boarded by the *Mangrove*. * * * The *Indiana* and *Mangrove*, which had been together between 4.30 and 5.00 o'clock, had been moving away from each other for nearly an hour, the one at the rate of about 10 knots, the other about 8 knots an hour, and the distance passed over must have been about 12 or 15 knots at least, or from 14 to 16 miles is but a fair measure of their distance apart."

The testimony to support this reasoning of the Judge is found in the evidence of Lieutenant Decker, of the *Indiana*, where he gives an extract from the official log of the *Indiana*, at bottom of page 35 of the record, as follows:

"At 4.30 made signal to *Mangrove*. She came within hail and was given orders to proceed to Key West after receiving mail. 5 P. M. mustered the crew to quarters. [This followed after the *Mangrove* had left, which must have been, therefore, before 5, *Mangrove's* witnesses say 4.30.] At 5.10 went ahead

full speed to communicate with F. At 5.15 sighted strange brigantine-rigged steamer to east'ard. * * * At 6.00 headed for her."

And in the evidence of same witness, in answer to interrogatory 3, at page 40 of the record:

"* * * agoing about ten knots. The *Mangrove* was seen to head for steamer, and at about 6.10 the steamer stopped."

And in the evidence of Ensign Henry C. Mustin, of the *New York*, aide to the commander-in-chief, who says, bottom of page 51 and top of page 52:

"At 6.05 the *Indiana* signaled this ship, 'Strange vessel changed course east.' At 6.06 the *Indiana* signaled this ship, '*Mangrove* near strange steamer,' the *Indiana* being then distant not more that 400 yards from this ship. * * * The *Indiana* at the end of the signaling was approaching this ship from the direction of the strange steamer."

Note that the witness states that the *Indiana* did not turn until after the last signal at 6.06.

The *Mangrove*, Captain Chadwick says in his affidavit, on page 6, of McCammon & Hayden's brief for a new trial, according to the best of affiant's recollection, steamed at eight knots as a rule, *and at the most, nine.* If the *Mangrove* could, as is stated in this affidavit asking for further evidence, steam nine knots, it should be admitted that when carrying the mails she was steaming nine knots; and it goes without saying that she was steaming at her utmost speed when a possible prize was in sight in the direction she was going. If instead of calculating the speed of the two vessels at eight and ten knots, they were steaming at nine and ten knots respectively, then even if the *Mangrove* had been going only an hour, the

vessels were nineteen knots, or over twenty-one miles apart when the *Indiana* turned, even if the turning was at six o'clock, as appears by the log of the *Indiana*. This upon the supposition that they had been steaming apart one hour, as Judge Locke estimates. But it must be recollected that the *Indiana* when steaming at full speed toward the *New York* would require some time within which to turn, say five minutes; and it may be that when the log speaks of her heading at six o'clock for the *Mangrove* and *Panama*, it speaks of the turn as of the instant when the order was given. This would account in part for the apparent discrepancy between turning at six and turning, as Ensign Mustin said she did, after signaling at 6.06. But it is perfectly clear from the official log of the *Indiana* as given on p. 35 which contains a clause about mustering the crew that is omitted from the same log on p. 44, that the *Mangrove* had sailed away from the *I.* before 5 o'clock and this of course increased the distance above estimated.

Will the court, in view of the decisions quoted, tempt the men on the claiming ships to controvert this evidence by giving their opinions that the ships were nevertheless in signal distance?

It is to be remembered that the distance between the *Panama*, the prize, and the *Indiana*, from the time the *Panama* was first sighted, had probably not increased, but decreased after the time the *Indiana* first sighted the *Panama*, because both ships were sailing in the same direction, southwestwardly. The distance, however, between the *Mangrove* and the *Indiana*, which is the point in question, was all the time widening until the latter turned. All this appears from the affidavit of Captain Chadwick in this motion for a new trial (see page 3 of the brief of Messrs. McCammon & Hayden) where he says:

"At this time the U. S. S. *Indiana* was coming toward the *New York* from the direction in which this steamer had been reported—that is to say, *from the northeast.*"

III. What was the distance travelled by the *Mangrove* after the capture of her prize and the *Indiana* after she had turned from within 400 yards of the *New York*, towards each other? We have seen that the evidence varies as to the time when the *Indiana* completed her turning and headed for the *Mangrove*. The log of the *Indiana* says she turned at 6.00. Ensign Mustin, of the *New York*, says, page 52 of the record: "The *Indiana* at the time of the signals was approaching this ship (the *New York*) from the direction of the strange steamer," and the last signal he had given was at 6.06. It was at 6.45 that the *Indiana* fired across the bows of the *Panama*, when she was coming. The *Indiana* then had been travelling, of course, at her full speed towards the prize, from 35 to 45 minutes, say 40 minutes. Reckoning her speed at 12 knots—and she is a 16-knot ship and must have been able to make then 12 knots—she had travelled 8 miles; reckoning it at 10 knots, she had made 5⅔ knots. But the *Mangrove* had been coming towards her, with her prize, for at the very least a half an hour, because the capture had been made at 6.07. If the *Mangrove* had made four knots, this added even to the lesser estimate, would make 9⅔ knots, or about 11 miles. But this did not cover all the distance, because the *Indiana* was certainly not close enough to see and understand the situation when she fired this shot. She seemed either not to have known that the *Panama* had been captured, or to have supposed that the *Panama* had escaped; and therefore she must have been a long way off when she fired. We can only conjecture the distance. The *Indiana's* guns

would carry 12 miles, and more. The *Indiana* had gotten close enough to see the colors of the Spaniard, and she fired.

IV. Just why she did this remarkable thing her log does not explain. But it does explain, see page 37 of the Record:

> "The Spanish colors were hauled down at 6.48. Sent officer and prize crew of the following men (naming them). The prize proved to be the *Panama*, from Barcelon, five days out, etc."

The log fails to note that Ensign Dayton was already on board as prize master, put there by Captain Everett of the *Mangrove*, and that under the latter's direction Mr. Dayton was steaming the *Mangrove* towards the *Indiana*.

What makes this firing across the bow of the *Panama* particularly strange is, that although it is said to have occurred at 6.45, the sun does not set in the latitude of Havana on the 28th of June, until 7 o'clock.

Is it possible for the court to believe the correctness of the opinions expressed by the witnesses for the *New York* and the *Indiana*, that the *Indiana* was all the time within signal distance of the *Mangrove*, when here, in plain daylight, half an hour and more after this capture took place, the *Indiana* did not really know the situation?

HERBERT & MICOU,
For the Mangrove.

H. C. Herbert
Benj. Micou.

Affidavit of Clerk of Court.

STATE OF FLORIDA, } ss:
Duval County, }

Eugene O. Locke, being duly sworn deposes and says: My name is Eugene O. Locke. I am Clerk of the U. S. District Court for the Southern District of Florida, and was so during the year 1898 and ever since. As clerk I have had charge of the papers and records in the case of the U. S. *v.* S. S. *Panama* and Cargo, and have had correspondence with the attorneys representing the claimants to prize money.

Correspondence and briefs were not "filed" but briefs were submitted to the judge of said court, to my personal knowledge by attorneys representing the claims of the *Mangrove*, and the *Wilmington* and *Indiana*. I have those briefs now before me. It is my recollection that brief was also submitted by attorney representing the *New York*, but I do not find such brief among the papers in the clerk's office. I know that Mr. Browne, representing the officers and crew of the *Mangrove*, was before this court, and left his brief with the judge, and that afterwards Mr. Hayden from Washington, whom I understood to be representing McCammon & Hayden, attorneys for the officers and crew of the *New York*, and also to be representing Wm. B. King, attorney for the officers and crew of the *Wilmington* and *Indiana*, was before the judge at chambers, and I understood him to be here in behalf of said claimants. McCammon & Hayden did file a brief; it is now before me.

The judge did not hand down his decree as to award of the prize money till some time after Mr. Hayden left here.

I had letters before the hearing, from the several attorneys interested in claiming the prize money, at various times, which I did not preserve, and can not recall exactly, but my understanding derived from them was, that they would submit the question on the depositions filed, and brief; and no extension of time was asked for for taking of testimony, or for other purpose, but all seemed anxious—from their correspondence—to get a decision.

I have no interest in any question connected with the distribution of said prize money.

EUGENE O. LOCKE.

Sworn to and subscribed before me March 27th, 1901.

WILLIAM J. LOCKE,
Notary Public,
State of Florida at Large.

[SEAL.]

U. S. DISTRICT COURT, } ss:
Southern District of Florida, }

I, Eugene O. Locke, clerk of said court, hereby certify that in the case of the United States *vs.* S. S. *Panama* and Cargo, Prize, all the depositions and claims as to share in the prize money by the *New York*, *Wilmington* and *Indiana* were filed in this court in May, 1898.

That objections to the report of the Prize Commissioner was filed by McCammon & Hayden, proctors for U. S. S. S. *New York* and by W. B. King, proctor for U. S. S. *Indiana* and *Wilmington*, on May 12, 1900.

That certified copy of the log of the U. S. S. *Indiana* was filed as evidence on June 1, 1900.

That brief of William B. King, attorney for commander, officers and men of U. S. S. *Wilmington* and U. S. S. *Indiana* was submitted to the court before decree was made. Also brief of McCammon & Hayden for *New York*.

That decree was made on June 15th, 1900.

That before decree was made, Jefferson B. Browne had been before the court and handed in brief, and Mr. Hayden had been before the court.

That all of above appears from the papers and entries on file and of record in my office as clerk of said court.

In witness whereof I hereunto set my hand officially, and affix the seal of said Court at Jacksonville in said District, this 27th day of March, A. D. 1901.

[SEAL.]

EUGENE O. LOCKE,
Clerk.

21

Affidavit of Jefferson B. Browne.

STATE OF FLORIDA, }
County of Monroe, } *ss:*

Before me, a notary public in and for said county and State, personally came Jefferson B. Browne, who being duly sworn deposes and says:

My name is Jefferson B. Browne; I am of counsel for the officers and crew of the U. S. S. *Mangrove*, in the matter of the distribution of the proceeds of the Spanish prize *Panama*. Some time after the determination of the case of the U. S. *v.* the *Panama*, by the Supreme Court of the United States, I applied to Judge Locke of the District Court for the Southern District of Florida, to know when he would take up the matter of the distribution of the proceeds, and he advised me that he would hear it any day upon reasonable notice given to parties on the other side, and on April 23d I gave notice to Messrs. McCammon & Hayden, and the U. S. District Attorney, that I would call the matter up on May 8th. A copy of my letter of transmittal is hereto attached, and on May 2d, I received a letter from McCammon & Hayden, stating among other things, that "if they were not able to appear in Jacksonville on the 8th, they would submit the case on brief," which letter is hereto attached. On the day I left Key West for Jacksonville, I received a letter from them asking me to postpone the hearing, as they had some matters which would take them to Jacksonville later, and they did not care to make two trips, as Jacksonville was a long way from Washington. As there were some other matters set for hearing before the District Court at that time, in which I was engaged, I could not accede to their request, and as Key West in point of the time it takes to reach there, and the fare thereto, is far from Jacksonville as Washington is, my reasons for submitting it at the time stated were as strong as theirs for wanting it postponed.

On the day set for hearing, a telegram was received by the U. S. District Attorney, which he brought to the attention of the court, asking that time be given Messrs. McCammon & Hayden, and Geo. A. & W. B. King to file

briefs, and the court so informed me on the hearing, and that he would let me submit my case at that time, and I should furnish them each with a copy of my brief, and that he would require them to furnish me with a copy of theirs, and that I would be permitted to file a supplemental brief, if I desired. I did as the court instructed, and received copies of briefs from these gentlemen, and filed a short supplemental brief. As there was to be no oral argument of the case by counsel for other claimants, I merely called the court's attention to one or two points, and submitted my brief, the entire time not occupying a half hour, and the case was practically submitted on written briefs. All the briefs were before the court not later than the latter part of May, and the opinion was not handed down until June 15th.

JEFFN. B. BROWNE.

Sworn to and subscribed before me this 25th day of March, A. D. 1901. J. M. PHIPPS,
[SEAL.] *Notary Public.*

April 23d, 1900.

Messrs. MCCAMMON & HAYDEN,
Washington, D. C.

MY DEAR SIRS:

I am sending you with this notice of hearing of the matter of the distribution of the proceeds of the S. S. *Panama* and Cargo, as I have been advised that you represent the officers and men of the U. S. S. *New York*.

I trust that it will be convenient for you to be present then, as there is one contention in which we are equally interested, and that is that the *Panama* was of "equal or superior force to her captors" and that they are entitled to the entire proceeds.

Even if the *New York* is admitted to share, as having been "in signal distance," she was not a part of the "capturing force," and if we can establish the fact that the *Panama* was of "equal or superior force" to the *Mangrove* the entire proceeds will go to her captors. The *Atalanta*, 2 Fed. Cases, 119. Very truly yours,

23

LAW OFFICES OF
JOS. K. MCCAMMON,
JAMES H. HAYDEN,
1420 F STREET, WASHINGTON, D. C.

April 28, 1900.

DEAR SIR. We beg to acknowledge the receipt of your letter of the 23d inst., enclosing your notice in the case of the *Panama*. At the present time it is very doubtful whether we can be present at Jacksonville on the 8th proximo. While we should be glad to have the court hold that the *Panama* constituted a force superior to that of the captors, we fear that such a ruling can not be obtained. First: because the *Panama*, at the time of her capture, was merely a mail steamer, and as such, her guns, while in position, were not in serviceable condition.

Second: because the *New York*, which was within signal distance of the *Mangrove* when the capture was made, was alone superior in force to the *Panama*.

Although the *New York* did not take an active part in the capture, we believe that her presence within signal distance of the *Mangrove* not alone entitled her to share in the prize money but constituted her a part of the capturing force. This is in accordance with the decision of the Supreme Court of the United States in the case of the Iron-clad *Atalanta*, 3 Wall. 434, and other authorities.

If we are not able to appear in Jacksonville on the 8th proximo, we shall submit the case on brief.

Yours very truly,
MCCAMMON & HAYDEN.

JEFFERSON B. BROWNE, Esq.,
Key West Florida.

STATE OF FLORIDA, } ss:
County of Monroe, }

Before me, a notary public duly commissioned and qualified in and for said county and State, personally came Jefferson B. Browne, who being duly sworn deposes and says: that the attached letter was duly received by me from the writers, and in accordance with their request

I raised no objection to the filing of the briefs of the respective counsel, and the same was duly filed.

JEFFN. B. BROWNE.

Sworn to and subscribed before me this 25th day of March, A. D. 1901. J. M. PHIPPS,
[SEAL.] *Notary Public.*

LAW OFFICE OF
GEORGE A. & WILLIAM B. KING,
No. 728 17th Street,
WASHINGTON, D. C., *May 12, 1909.*

T. JEFFERSON BROWNE, Esq.
Attorney at Law,
Care of Clerk, U. S. District Court,
Jacksonville, Fla.

DEAR SIR: We have submitted, on behalf of the *Indiana* and the *Wilmington*, a brief setting forth the grounds of the contention of the *Indiana* and *Wilmington* to share with the *New York* and the *Mangrove* in the proceeds of the *Panama*. On filing this brief a copy of it was sent the clerk of the court for your consideration. We trust that it will be satisfactory to you to raise no objection to the consideration by the court of this brief, as well as that filed by Messrs. McCammon & Hayden on behalf of the *New York*. Yours respectfully,

GEORGE A. & WM. B. KING.



Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, Appellant,
v.
THE OFFICERS AND CREW OF THE U. S. S. *Mangrove*. } No. 24.

THE OFFICERS AND ENLISTED MEN OF THE U. S. S. *New York*, and Other Appellants,
v.
THE OFFICERS AND CREW OF THE U. S. S. *Mangrove*. } No. 34.

BRIEF OF COUNSEL FOR APPELLEE.

Statement of Case.

The District Court for the Southern District of Florida adjudged that the U. S. S. *Mangrove* was the sole capturing vessel of the *Panama* and cargo; that the prize was of superior or equal force; that no other vessel was within signal distance, or entitled to share; and that the total net proceeds were decreed to the officers and crew of the U. S. S. *Mangrove*. (Rec. p. 59.)

Opinion of the court is in Rec. pp. 53–59. Appeals were taken to this court by the United States (Rec. p. 60) and by the officers and crew of the U. S. S. *Wilmington*, *New York* and *Indiana* (Rec. p. 63).

NOTE.—References to questions put to witnesses where numbered give the number and page; where not numbered reference is to the page. Pages of the Additional Record are referred to as Add. Rec.

On motion of appellants in this court leave was granted to take further testimony.

Questions Involved.

Section 4632 R. S. provides:

"All vessels of the navy within signal distance of the vessel or vessels making the capture, under such circumstances and in such condition as to be able to render effective aid, if required, shall share in the prize," etc.

Section 4630 R. S. provides:

"The net proceeds of all property condemned as prize, shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors."

The *Mangrove* made the capture. The vessel captured was armed and of superior force to the *Mangrove*. (Q. 31, p. 9; Q. 31, p. 13; Q. 31, pp. 16 and 17, Rec.; Q. 14, p. 158; Q. 7, p. 171; QQ. 73–79, pp. 143–144; X-QQ. 3–9, pp. 144, 145; X-QQ. 1–5, pp. 146 and 147, Add. Rec.)

Relative Force.

Were the *Wilmington*, *New York*, *and Indiana* entitled to share in the prize, they should not be counted in estimating relative force.

Section 4630 provides:

"The net proceeds of all property condemned as prize, shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors."

The comparison here made is between the prize and the vessel making the capture.

Section 4632 in relation to the vessels entitled to share makes this provision:

"All vessels of the Navy within signal distance of the vessel or vessels making the capture, under such circumstances and in such condition as to be able to render effective aid, if required, shall share in the prize, and in case of vessels not in the Navy, none shall be entitled to share except the vessel or vessels making the capture; in which term shall be included vessels present at and rendering actual assistance in the capture."

This section recognizes that there are two classes of vessels which share in the prize—those "making the capture" and those "within signal distance." It also recognizes that vessels "making the capture" are only those "present at and rendering actual assistance."

The comparison under Section 4630 is between those "making the capture" and the prize, and vessels within signal distance not "making the capture" are not to be considered.

The *Mangrove*, it is admitted, in this case made the capture, and therefore under Section 4630 is the only vessel entitled to be considered in determining relative force, even if the other vessels within signal distance, under Section 4632, would have to be omitted in making the comparison required by Section 4630, and the entire proceeds be awarded the captors and no share to the United States because the *Panama*, the prize, was of superior force to the vessel making the capture, the *Mangrove*.

Judicial precedent for this view is found in *The Atlanta*, 2 Sprague, 251; 2 Fed. Cas. 116.

The *Atlanta* was captured by the United States monitors *Weehawken* and *Nahant*. The capture was made by these

two vessels although actual shots were fired only by the first. The *Nahant* was immediately on the scene of battle and within a few hundred yards of the prize, ready to fire. In company with these vessels was the steamer *Cimmerone*, which, not being armored, was left within signal distance but entirely out of the battle.

In discussing the rights of this vessel the court says:

"It is admitted by the officers of both monitors, that the gunboat *Cimmerone* was all the while within signal distance, and acting under the orders of the senior officer, and consequently entitled to participate in the distribution, as being "within signal distance of the vessel or vessels making the prize." The only question as to her is, whether she is to be counted in as part of the capturing force; that is, whether she is to be deemed one of the vessels "making the capture," within the meaning of the statute, when we are comparing the force of the captors with that of the prize, for the purpose of determining whether the proceeds belong wholly to the captors or are to be divided between them and the Government.

* * * * * * *

"Our statutes, as I held in *The Cherokee* (*supra*) recognized two classes, vessels making the capture and vessels which do not make the capture, but are within signal distance of those that do. From this the inference is, that the mere fact of being within signal distance, able and ready to give aid, if required, does not bring a vessel into the first class. If it did, we should confound the distinction made by the statute, and treat as actual captors all who were within signal distance of actual captors. Another result would follow, that all vessels within signal distance of this second class of vessels would share in the distribution, though not within signal distance of the first class, because they would be within signal distance of some of the vessels which we should have held to be vessels making the capture. I have no difficulty, therefore, in deciding that I must exclude the *Cimmerone*, in determining the relative force of the captors and the prize. In like manner, I exclude the gun boats of the rebels

which were within signal distance of the *Atlanta*, but kept aloof."

The same judge had previously in his very elaborate opinion in the case of *The Cherokee*, 2 Sprague, 235; 5 Fed. Cas. 550, recognized this separation of vessel entitled to share in the distribution into two classes in the following terms:

"By our statutes, there are two classes of ships, and two classes only, which are to participate in the prize. The first are those who make the capture, or, in other words, those making the prize. The second class are those within signal distance of one of the first class."

The case of the *Atlanta* was subsequently taken to the Supreme Court, 3 Wall. 425, on the question whether the *Nahant* should be regarded as one of the capturing vessels. It was decided that since the *Nahant* had been directly present, almost as near, had been fired upon by the *Atlanta* and thus created a diversion from the *Weehawken*, and was ready to fire, had the fire of the *Weehawken* not been unexpectedly decisive, the *Nahant* must be included with the *Weehawken* in the comparison of the forces engaged in the conflict. The decision below was therefore affirmed. This is in nowise a reversal of the decree of the court below or a condemnation of its opinion in holding that the *Cimmerone*, while within signal distance and to be counted in the distribution, was not to be included as one of the vessels making the capture.

The point made is based upon the words of the statute itself. For the purpose of computing relative force the vessels making the capture are alone to be considered, and the *Wilmington*, *New York* and *Indiana* must be excluded under Section 4630 in a comparison of relative force without regard to what construction the court may

adopt as to the right of these vessels to share in the distribution under Section 4632.

The *Mangrove* is entitled to the entire net proceeds, unless the other naval vessels claiming were within signal distance, under such circumstances and in such condition as to be able to render effective aid, if required.

Not Capable of Rendering Effective Aid.

No testimony is offered to show that the vessels claiming to have been in signal distance were under such circumstances and in such condition as to be able to render effective aid to the *Mangrove*, if required, or as to *the distance at which they could with their guns render effective aid.*

Testimony of the captain of the *Indiana*, for appellants, that he considered when the *Indiana* fired at 6.45 that there was danger of the *Panama* eluding the *Indiana* and escaping (Add. Rec. pp. 70, 71) certainly raises serious doubt as to whether at the time of the capture, 35 to 40 minutes before, the *Indiana* was close enough to have rendered effective aid. He is so emphatic as to say: "I have no doubt in my mind that the prize would have been lost if she had once passed us on that occasion" (Add. Rec. p. 71). This from the chief witness for appellants.

Lieutenant Dayton, a witness for the appellee, is very positive the *Indiana's* guns could not have been effective, and gives his reasons very clearly. (Add. Rec. QQ. 80, 81, p. 144.) The testimony of witnesses on the *Mangrove* and of totally disinterested witnesses upon the *Panama*, of all they could see at the time of the capture, and the testimony showing the vessels to have been at that time about 14 knots apart, all hereinafter referred to, prove the *Indiana* was not under circumstances and in condition to render effective aid if required.

When the *Panama* and *Mangrove* were approaching the

Indiana, the *Mangrove* on the port side, Captain Waller, of the *Indiana*, fired a shot at a range of 4,500 yards, some 2½ knots, and it struck the water between the two ships, and ricocheted towards the *Mangrove* (Add. Rec. QQ. 25, 26, p. 268). It was intended to go across the bow of the *Panama*. This clearly shows that when the *Mangrove* and the *Panama* were close together, at the time of or just before the capture, any attempt by the *Indiana* to aid the *Mangrove* by firing at the *Panama*, even if the two vessels at that time were not more than six or seven miles off, would have been as dangerous to the American vessel as to the Spanish ship. The evidence shows that when the *Mangrove* summoned the *Panama* to surrender, the *Indiana* was considerably more than 14 knots away.

Wilmington.—Discussion of the claim of the *Wilmington* will be found in the opinion of the court below (p. 58). No additional testimony for this vessel has been taken since. All the testimony bearing on the claim of this vessel is to be found pp. 46–48 inclusive of the Record.

New York.—Discussion of the claim of the *New York* by the court below will be found pp. 58, 59 Rec.

There is no additional evidence warranting change from the view expressed by the court below. The captain of the *New York* states his vessel was not within signal distance. (Add. Rec. QQ. 40–41, p. 100; QQ. 21–23, p. 99). For testimony concerning the whereabouts of the *New York* at the time of the capture, see Rec. Q. 10, p. 40; Q. 4, p. 41; Q. 4, p. 43; Q. 4, p. 51; Q. 9, p. 42; Add. Rec. Q. 215, p. 26. Not in sight from *Indiana*, 2, 4, 5 and 6, p. 212; 2, p. 230; 2, p. 236; 2, p. 243; 5, p. 249; 4–6, p. 256—all in Add. Rec.

This narrows inquiry down to the *Indiana*.

Appellants, unwilling to risk the decision of this court upon the facts as presented by the original record, pro-

cured an order for taking additional evidence. The testimony is now all in, and our main propositions are—

1. The burden is upon the appellants, first, *because they are the plaintiffs*, and secondly, *because the decision of the court below is against them on the facts.* This court ought not to reverse upon a mere difference of opinion as to the weight and effect of conflicting testimony. To warrant a reversal *it must be clear that the* lower courts have committed an error and that a wrong has been done to the appellant. (*Lockwood* v. *The Grace Girdner*, 7 Wall. 196; L. L. 19, 113, and cases there cited.)

2. Judge Locke, Rec. pp. 3–6, cited, with approval, a decision from I Lowell, that "from five to six miles was the average distance at which flag signals could be read," stating also that the case cited showed that *one witness* had testified "eight miles" as the utmost limit of vision in reading flag signals.

3. Appellants have failed to show the incorrectness of this decision.

4. Judge Locke, in his opinion, said:

"The testimony of the several witnesses in respect to the distance of the vessels apart is not the result of actual measurement, but are conjectural, and matters of opinion only, and must be so considered, particularly where there is such a conflict of testimony, and it is more satisfactorily shown by their movements (the ships) than it can be by the conflicting opinions of the witnesses." (Rec. p. 56.)

And deciding that the *Mangrove* started at "a little before 5 o'clock" and was running away from the *Indiana* at the rate of eight miles, and that the *Indiana* starting southwardly at 5.10 was running at the rate of 10 knots until 6.00, he concluded they were at least 12 or 15 knots apart at the time of the capture at 6.07.

5. New evidence is mainly important as it bears upon the two points, the time the vessels were running away from each other, and their speed. One witness, Admiral Taylor, minimizes the time during which the *Indiana* was running, testifying that the *Indiana* stopped for some minutes. We overcome this by his log, showing that the *Indiana* never stopped at all—only slowed at 5.48, and by two of appellee's witnesses we corroborate the log.

6. It was open to appellants to show conclusively by the log of the *Indiana* that her speed was less than ten knots. They failed to produce this primary evidence, and resorted to the secondary evidence of witnesses whose memories might tally with their theory.

7. We produce, under the order for additional testimony, the steam-log of the *Indiana*, showing that she made not only greater speed on other occasions about that time, but also that actually in that chase she made three-quarters of a knot more than the speed on which Judge Locke based his estimate.

8. The *Indiana* appellants produce under order for additional testimony, three officers, Captain Taylor, Colonel Waller, and their chaplain—a notable expert on speed and distances—whose memories at a distance of three years minimizes the speed of their ship as given by its log, from which alone they could have derived their knowledge.

9. *Per contra*, Captain Dawson and Lieutenant Decker, of the *Indiana*, who were examined *in preparatorio* shortly after the capture, and every other officer and man, not attached to the *Indiana*, examined on this point, from start to finish—including the captain of the flagship, one of appellants' witnesses—agree with the log of the *Indiana*, or give her as great or greater speed than Judge Locke estimated upon.

10. As to the enlisted men whose memories are counted

on to minimize the speed shown by the *Indiana's* log, we will comment on their evidence and ours on the same point hereafter.

11. The *Mangrove's* signal flags were 3 x 4, one-seventh a surface of the usual signal flags, 11 x 8. Appellants have testimony showing from experience the distance at which the usual flags can be read. The burden was upon them to show by similar testimony, how far boat-flags like the *Mangrove's* could be read. They have no testimony whatever on that point, and for this reason also their case must fail.

12. We make an estimate similar to that of Judge Locke, based upon the distances run by the *Mangrove* and the *Panama* away from each other, taking in all the new evidence, and this estimate shows that at the time of the capture the *Indiana* was 13½ knots away. Judge Locke's estimate was "12 or 15 miles at the least."

13. We further strengthen the judge's conclusion by another estimate based upon the distances run by the *Indiana* and the *Mangrove* in going towards each other after the capture till they met. This estimate based on the testimony of the logs and of the gun fired by the *Indiana* at the Spanish flag as the ships approached each other shows 13.35 knots.

Judge Locke reconciled the testimony by concluding that those on the *Indiana*, which was the taller ship, could see the *Mangrove*, while those on the latter, it being lower, could not see the former.

So far as reconciliation is possible, this is the only theory. Failures in memory after 3 years must account for the rest. Much of the testimony, especially from the deck, is irreconcilable with the facts. We certainly do not intend to assail the veracity of the officers of the *Indiana*, most of whom we personally know. Appellants' most important witness, Admiral Taylor, has, and de-

serves to have, as do the others, the very highest character. All the errors of memory the Admiral has fallen into we can, fortunately, and do, account for naturally. We comment more on his errors than those of others because he is their most important witness.

The Admiral says he stopped the *Indiana* while signalling the *New York*. The *Indiana's* log and two witnesses on the *New York* show he is mistaken. *He had in mind* that he gave an order which stopped the high speed the ship was making, and he did give an order somewhat to that effect, but the log (p. 202, Add. Rec.) shows the order was only to slow and not to stop and that that was at 5.48.

Again, Admiral Taylor says: "When the *Indiana* started toward the *Mangrove* and the *Panama* at 6.00, she went leisurely because not in a hurry"; and that speed was quickened when the *Mangrove* fired. *He had in mind* the quickening order, and had forgotten that, as the log shows, the first order was for "full speed to make 85 turns" and that it must have been after the gun fire that the order came for "all possible speed."

So the Admiral's giving the speed capacity of the *Indiana* at much less than her log shows, is accounted for by recalling her foul bottom, his continued anxiety lest she should break down, her slow speed compared with her consorts. Her habitual slow speed had impressed itself upon his memory.

As for opinions of distances on water, nobody can be held responsible for them. As this record shows, if any two or more witnesses agree it is accidental.

So of the *Indiana's* chaplain, who testified that certain men on the *Mangrove* said that they saw the *Indiana*, or that the *Indiana* was in sight, when they expressly denied it. Doubtless the chaplain was never before in a chase, and in his excited mood it was easy for him to mistake an

expression like "There is the *Indiana's* smoke," for "There is the *Indiana*," etc.

In the outset we call attention to the fact that the *Indiana* originally claimed as captor.

Following are the circumstances out of which that claim arose: The capture was made at 6.07 P. M. The *Mangrove* with her prize, the *Panama*, Ensign Dayton on board as prizemaster, was going south in search of the *Indiana* to get from her men (which the *Mangrove* could not spare) to complete the prize crew. Under an order of the Navy Department prizes were to fly their flags until an order of condemnation. (Bottom p. 70, Taylor; 30–33, p. 109, Everett; 19, p. 125, Palmer; 46, 47, p. 141, Dayton, all Add. Rec.) Captain Everett had allowed the flag of the prize to continue to fly at the topmast, instead of being lowered to half-mast, The *Indiana, which had turned and was now rapidly coming up, when she came close enough to see this flag on the coming vessel, fired, and the flag was at once lowered.* Captain Taylor's recollection, when asked three and a half years afterwards, why he fired that shot, is as follows:

"I fired it, for my own part, because I feared she would escape from the *Mangrove*. Officers who were on the bridge with me spoke of her colors not being down. This was, I remember, an added reason for firing a gun, but primarily I gave an order to fire because I feared that the *Mangrove* had not completed the capture, or, having completed it, the vessel might still escape her." Bottom of p. 61, Add Rec.

Captain Dawson, signal officer on the *Indiana*, and on the bridge, evidently saw no indications that the prize was about to escape (Q. 347, p. 40, Add. Rec.)—

"Q. Well, why then, did you fire across the bow of the *Panama* later on?

"A. Because we saw the Spanish colors flying."

The following testimony is strong to show that Captain Taylor had been so far away *that he did not really know the situation* when he fired:

Captain Everett of the *Mangrove* said: " * * * I hailed the *Indiana*, and said something to this effect: 'Captain Taylor, that is my prize,' to which he replied: 'I congratulate you; *what is she?*'" (Near top of p. 106, Add. Rec. See also Cosgrove's testimony, Q. 7, near bottom p. 172 and top p. 173.)

When Captain Taylor was asked about this, the answers and questions were as follows:

"Q. Admiral, after you fired this shot across the bow of the *Panama*, are you certain that you hailed the *Mangrove* to come alongside, or did Captain Everett steam up of his own accord and call out to you?

A. I do not remember which passed the first hail.

Q. Do you remember whether you asked him what ship it was that he had?

A. *I do not remember.* I remember one thing in the conversation was 'I congratulate you,' or 'We congratulate you.'" (Near top p. 72, Add Rec.)

When asked whether there were any suspicious circumstances at the time of firing he enumerates, as follows: "One, that she was proceeding on her way with the *Mangrove* some *distance astern* when the *Panama* could see him plainly, and both she and the *Mangrove*—they were coming right toward him"; second, that her colors were still flying," which ought to have convinced him that she was making no attempt to deceive him, and then he adds: "*she had not given the token of surrender* which is customary in all actions in maritime affairs." Still adhering to this same idea he further justifies it, top p. 76, Add. Rec.: "I am confident from what I have learned that it (the Spanish flag) had not been hauled down.

When the *Indiana's* gun was fired the Spanish colors

were hauled down and a prize crew put on board, to serve under Ensign Dayton, the *Mangrove's* prizemaster. *This the Indiana chose to treat as a capture.* In her steam-log is an entry made the same day (p. 202, Add. Rec.) showing how the *Indiana's* people looked upon their exploit: Chased *and captured Panama*, bound into Havana." Upon this idea the first claim for prize was made out the next day at sea, April 24, 1898, and filed in court May 11, 1898.

Under § 4616 of the Revised Statutes, the commanding officer is required "to make out a written statement of his claim, *with the grounds on which it is founded*, the principal facts tending to show what vessels made the capture and what vessels were within *signal distance* of those making the capture, with reasonable particularity as to the times, *distances* and characters of signals made, seen or answered," etc.

Then § 4632 provides that "all vessels of the Navy within signal distance," etc. shall share in the prize. The *Indiana's* claim was as follows:

155. U. S. S. *Indiana*, 1st Rate,
At Sea, April 26th, 1898.

SIR: 1. In accordance with Sec. 4616 and 4632, R. S., I herewith present the claim of myself, officers, and crew for a share in prize money awarded under law for the capture of the Spanish steamer *Panama*, off Havana, Cuba, April 25, 1898.

2. The following is an extract of the official log: 4 to 8 P. M. At 4.30 P. M. made signal to *Mangrove*. She came within hail and was given orders to proceed to Key West after receiving mail. 5 P. M. mustered crew at quarters. At 5.10 P. M. went ahead at full speed to communicate with "F." About 5.15 sighted strange barkentine-rigged to eastward. Steamer sighted later proved to be a barkentine-rigged steamer with long black stack and straight bow. At 6.00 headed for her. The *Mangrove* was seen to head for the steamer, and at about 6.10 the

steamer stopped. Later the *Mangrove* and steamer, whose colors were made out to be Spanish, steamed slowly to the westward. At 6.45 fired shot across bow of steamer, and Spanish colors were hauled down at 6.48. Sent officer and prize crew of the following men [naming them]:

The prize proved to be the *Panama*, of Barcelona, 5 days out from New York, with 29 passengers and general cargo. *Panama* with crew stood to the westward to communicate with "F." Signals as follows:

5.40—"I" to "F." Will proceed on service at once.
5.45—"F" to "I." What is character of strange vessel?
5.50—"I" to "F." Merchant vessel.
5.52—"F" to "I." What colors does strange vessel carry?
5.55—"I" to "F." Can not see.
6. P. M.—"I" to "F." Strange vessel changed course to eastward.
6.45—"I" to *Mangrove*.—Come within hail. Rec. pp. 35, 36.

Nowhere in this claim is it stated that the *Mangrove* had anything whatever to do with the capture, or that any prizemaster was aboard. It is clear that the *Mangrove* was only mentioned in accordance with the explicit directions in § 4616, that the claim should show "what vessels were within signal distance of those making the capture." It is true that the claim purported to be made under §§ 4616 and 4632, but § 4632, it would seem, is only cited because the *Mangrove* was in signal distance and entitled to share under § 4632, the *Indiana* setting forth no grounds whatever for any claim for itself under that section. The claim also set forth, under § 4616, a record of "signals made, seen and answered," but it did not say anything about "distances," as required by that section, the claimant doubtless supposing that distances were to be set forth by the *Mangrove*, the *Indiana* having nothing to do with them, it having made the capture by compell-

ing the flag to be hauled down, putting on a prize crew, etc. *This claim was signed by Benton H. Decker, Lieutenant, U. S. Navy, and H. C. Taylor, Captain Commanding.* The claim that the *Indiana* was the captor under the circumstances shown in the evidence is simply playing at *opera bouffe.*

Signal Distance an Afterthought.

On May 3, 8 days after the first claim was filed, the second claim was made out and this new claim was filed in court May 19, signed by these same officers, in which was added to the statement first filed an assertion that the *Indiana* was "within signal distance and able to render effective aid," etc. To sustain this new claim the proposition of the *Indiana* is, that although (see log filed as basis of claims, Rec. pp. 35, 36) she sighted the *Panama* at 5.15 and remained in sight of her—both vessels travelling nearly in the same direction—until 6 o'clock, three-quarters of an hour, during which period the *Indiana* was not close enough to see anything that would justify her in turning about in pursuit; and although the flagship from 5.45 had been making inquiries as to the character of the strange vessel whose colors the man up aloft in the towers of the *Indiana* could not make out, the *Indiana* was nevertheless within signal distance all the time of the little *Mangrove,* which was continually going away from her; and this not only at the time when the flagship was inquiring about the colors of the strange vessel, at 5.52, but also at the time of the capture, about or a little after 6 o'clock.

The appellant's proposition further is, that it was "easier" for the *Indiana* to obtain the information the flagship wanted by turning about and going ahead at "full speed and then at all possible speed" for 45 minutes, say 7¾ miles, to see for itself what were the colors of the

stranger, than it would have been to obtain that information by signalling to the *Mangrove*, signalling being ordinarily done, as the log of the *Indiana* shows *supra*, in from 2 to 5 minutes. Nobody denies that it would have been the duty of the *Mangrove* to answer at once signals asking information for the flagship, nor that it was the duty of the *Indiana* to obtain that information. It is the testimony of the captain of the *Indiana* himself (Add. Rec. p. 69) that going with his ship to investigate, instead of signalling the *Mangrove* he was resorting to the "easiest" method of obtaining the information. So this court is asked to believe that the signal distance spoken of in the statutes covers cases where, as will appear from his own testimony, a prudent officer at the time of the transaction would not rely on, or even make any attempt at signalling, which he might have done even while steaming away, but would, instead, prefer to steam his ship at full speed for three-quarters of an hour, in order to find out the color of the stranger's flag.

Admiral Taylor (see answers to questions on p. 69 Add. Rec.) when asked whether signalling the *Mangrove* would not have been the easiest way to ascertain the color of the stranger said, "*No, it would have been longer, for at great distances it takes some time,*" and "*Signalling at this distance is always slow*" (light travels from one flag to another at the rate of *196,000 miles a second*); "it takes time," he goes on to say, "to make out signals at that distance when you come *near the limit, and twilight was approaching.*" There, in the distance, was the *Mangrove* approaching the *Panama* and, looking at her and at the sun, which at 5.52—when he signalled "can not see" the colors of the stranger—was half an hour and three minutes high (see agreed testimony, p. 203, Add. Rec.). Admiral Taylor's decision was at that time, and so his memory is now, that the easiest way was to go and see; instead of trying, when the sun was

so low, to signal the *Mangrove*, because she was so near the limit.

"It is true," he goes on to say, answering still the same question, "and further, there was no doubt in my mind that the flagship regarded the *Mangrove* as not of sufficient force to make sure of the prize"; but this further reason for going, deduced from the simple inquiry of the flagship as to the stranger's colors, does not in any measure affect the straightforward "No" with which the commander of the *Indiana* answered the question on p. 69, Add. Rec. whether it would not have been easier, etc. Signals about the strange vessel were passing between the three vessels that could signal. (See log of *Indiana*, *supra*.) First the *Wilmington* to the *New York;* then the *New York* to the *Indiana;* then the *Indiana* and *New York* to each other, back and forth; but the *Indiana* did not signal to the *Mangrove* and the *New York* did not suggest it, because, and it could be only because, at that time it was deemed impracticable.

Admiral Taylor's idea seems to be that the statute covers cases where ships are within signal distance theoretically, and his explanation seems to proceed on the further idea that this case was "so near the limit" that signalling was not practicable.

Three Classes of Testimony Relied On.

Counsel have offered evidence of three different classes to show that if signals had been made by the *Mangrove* at or about the time of the capture, the *Indiana* could have read them. These are:

1. What witnesses saw—the inference being that if they saw the things they have testified to they could also have seen signal flags from the *Mangrove*.

The conflict in the testimony of this class will be discussed generally hereafter. Here it is well to bear in

mind that the *Mangrove* was not in flag signal distance, unless the flag signals with which she was equipped could have been read. The weight of the testimony is, that 5 miles, or, at the very outside, 6, is the utmost distance at which signal flags ordinarily in use can be read. Captain Dawson, the *Indiana's* signal officer, testifies in answer to Q. 51, p. 9, Add. Rec. that the largest-sized flag in common use is 8 x 10; and in answer to Q. 52, p. 9, Add. Rec., that the largest size is 10 x 14 or 13. Ensign Palmer, Q. 48, p. 129, Add. Rec. estimates the usual signal flag at 8 x 11, and the boat flags, the only signals with which the *Mangrove* was equipped, he said were 3 x 4 (Q. 49, p. 129, Add. Rec.). Now if we take the average between these witnesses as the size of the largest signal flags, 12 x 10 equals 120 sq. ft. of surface; whereas the *Mangrove's* flags, 3 x 4, contain only 12 sq. ft. of surface—just $\frac{1}{10}$. If we estimate the usual flags at 8 x 10, or 80 sq. ft. of surface, this is just $6\frac{2}{3}$ times as many sqare feet.

Then again. The Spanish flag, *which the Indiana could not see*, as Ensign Dayton says, QQ. 34–39, p. 140, Add. Rec. *was 12 feet long, or three times the length of the Mangrove's signal flags*, and it must have been much wider.

Nowhere in all the multitudinous evidence that has been offered in this case is there any testimony to show that boat flags, such as the Navy Department had furnished to the *Mangrove* and she was compelled to rely on, have ever been read at 5 miles, or even 4 or 3.

2. The second class of evidence offered by appellants consists of opinions of the distance the several ships were apart at given periods. These opinions vary distressingly, but not unnaturally. One of the sailors prefaced his answer to a question of this character by saying "*Water is deceiving.*" Of course it is. There are no objects on the dead level of the water by which to measure. Captain Dawson, signal officer of the *Indiana*, when asked

(Q. 230, p. 27, Add. Rec.) whether he had not stated that the *Panama* was 6 or 7 miles off when sighted, answered: "I stated, if I remember rightly, that she appeared to be within 6 or 7 miles when sighted. I had no means of making an estimate except making a guess."

We have of course introduced in rebuttal much evidence showing opinions of distances, and our testimony on this point is quite as reliable as that of the appellant. We base our argument, however, at this point *not on opinions, which are mere guesses, but upon facts about which there can be no dispute.* Whether our inferences are warranted by our basis of facts the court will decide.

3. Some evidence has been introduced as to gun signalling, which is discussed hereafter. The testimony shows that while gun signalling is provided for in the Regulations, it is not in practical use. No witness has testified to any case in which such signalling, in the day time and in clear weather, has ever been resorted to in the navy.

The Testimony of the Logs.

We rely now upon "the official log" of the *Indiana*, pp. 35, 36 Rec.; the "steam-log" of the *Indiana* as certified to on top of page 202, Add. Rec. and upon other extracts from logs of the *Indiana* contained in the testimony of Lieutenant Dyson, and on pp. 198–202, Add. Rec. inclusive, together with the expert testimony of that officer explaining the significance of the extracts from the logs on pp. 201, 202, Add. Rec.

The parts of these several logs we rely on as technically and exactly correct are the statements which were recorded instantaneously, such as the precise periods of signalling, and entries made in the "steam-logs" showing the minute at which orders were given and the character of those orders, as well as also upon all the extracts from the log of the *Indiana*, showing speed at different dates. There

can be no question as to the correctness of any of these. As to the "smooth log," however, filed by the officers of the *Indiana*, as showing the grounds, and the only grounds, of their original claim, the case stands differently. The presumption is in favor of the correctness of this log, but errors may creep in here, *because this log is the generalization made up at the end of a day, or of a period of hours.* There error may creep in, especially if the makers of the log rely to any extent upon memory, as the evidence shows here they must have done, instead of consulting, as they should have done, at every step the original record.

Comments on the "Smooth Log" of the *Indiana* (pp. 351-6).

First Comment.—"At *5.10* P. M. went ahead full speed to communicate with F." Note the discrepancy between this and the *Indiana's* steam-log, p. 202, Add. Rec. introduced by us, which says: "Ahead full speed *5.05*." This difference *is sufficient to cover almost a mile by the Indiana.* See speed discussion *infra.*

Second Comment.—The signal of the *Indiana* to the *New York*, p. 36, was: "6 P. M. 'I' to 'F.' Strange vessel changed course to eastward." The *Indiana* undoubtedly saw at that time a movement of the strange vessel, a turning of her nose to the eastward, which warranted the signal; but the *Panama* never changed her course to the eastward for the purpose of continuing it. This signal can only mean that when the prize was ordered to stop and that order emphasized by the second and third shots from the *Mangrove*, the *Panama* heaved to. The vessel, if we believe her captain, Quevedo, (Rec. Q. 3, p. 13,) had commenced to slow down at the first shot, although Captain Everett, if we believe him, had not—very naturally, as the *Panama* was probably going straight

on—perceived it, wherefore he fired two after shots, whereat, in order to stop suddenly, the *Panama* "hove to," in the language of several of the sailors, which means that she turned her nose eastward in the water and her side to the *Indiana*, that she might stop as promptly as possible.

As to our proof, Ramon Burgas, a witness on the *Panama*, says, in answer to interrogatory 29, p. 9, Rec.: "The ship was steering her course toward Havana when she was captured. * * * Her course was always directed toward Havana."

Captain Quevedo, in answer to the same interrogatory, 29, p. 16, Rec. says: "We were steering our course toward Havana when we were captured. * * * *Our course was always directed for Havana.*" So say all the witnesses who, on both the *Indiana* and the *Mangrove*, speak on that point, including the two witnesses, Chaplain Cassard and Yeoman Murray, who belonged to the *Indiana* and who testify for her, they being at the time on the *Mangrove*, having shipped for Key West. Comparing the statement contained in the flag signals, "strange vessel changed course to eastward," with another statement lower down in this "smooth log," viz: the next statement about the movement of the prize—"and at about 6.10 the steamer stopped," we should have, if both statements be correct, the *Panama* running east, after changing her course to the eastward for 10 minutes, during which time, being a 12-knot ship, she would have steamed, allowing for time within which to slow down and stop, at least 1½ knots out of her course. The *statement, therefore, "Strange vessel changed course to eastward," signalled at 6 p. m., can only be interpreted to mean that it was at that time that the steamer "hove to" in order to surrender*, and the signal was sent immediately to the flagship as soon as the "strange vessel" was seen so to turn.

This construction of the meaning of the movement recorded by the signal at 6 is confirmed by the testimony of Captain Chadwick, appellant's witness (Add. Rec. Q. 13, p. 98): "The *Panama* was first heading to the westward and then she turned around and headed to the eastward" and (Q. 16) she had proceeded "only a short distance" before the *Mangrove* came alongside of her. Captain Chadwick was watching the result from the *New York* with the only long-distance telescope in the fleet. Compare Ensign Dayton, Add. Rec. p. 137, Q. 6. Three shots were fired and the vessel "heaved to," which means changed her course and stopped (Q. 7). "After the *Panama* had stopped dead in the water we came close to her on her starboard side, our port side toward the *Panama*, both heading in the same direction," which is exactly what would have been done if Captain Chadwick was right in saying that only a short time after the *Panama* changed her course to the eastward the *Mangrove*, which was coming from the southwest, ran alongside of her.

This tallies with all the evidence as to the time of the capture. Gaspar Thompson, supercargo on the *Panama*, testifies, interrogatory 3, p. 10, Rec.: "The ship was taken * * * at about 15 minutes to 6 o'clock P. M." Captain Quevedo, of the *Panama*, testifies, p. 13, Rec., interrogatory 3: "At 5.50 the first shot was fired by the *Mangrove*. After the first shot I stopped the ship." Both these witnesses evidently consider the capture as having taken place at the first shot, the ship having then decided to yield. Even on this supposition, their watches were a little slow. Compare with Captain Everett's testimony, Q. 4, p. 105, Add. Rec. He says he "fired a starboard 6-pounder, rapid-fire gun, across her bows to bring her to. She did not stop, and I rounded up and fired two shots from the port 6-pounder. At the third shot she

stopped," etc. It is evident, if we reconcile the testimony of these witnesses, that Captain Quevedo gave his order to stop after the first shot, but as it did not seem to Captain Everett that the stop which, of course, it would take her some time to make, was prompt enough if she continued straight ahead—he fired the other two shots, whereupon she must have stopped by turning her nose, as ships must always do if they mean to stop promptly and have plenty of deep water in which to arrest their onward course by turning.

Now take the testimony of a number of witnesses, which is not questioned, that the capture was completed by the putting of Ensign Dayton on board the *Panama* at 6.07, and we not only account for this signalling of the *Indiana* made at 6 o'clock, but the corroboration helps us to fix the time of the capture. The vessels were, as all the witnesses say, close together. Captain Everett says, Q. 4, p. 105, Add. Rec. between 100 to 200 yards apart. A boat could certainly be lowered into the water within from one to two minutes. Two men can pull a boat faster than the brisk walk of a man, which would cover a mile in twenty minutes, or 100 yards in a minute and a quarter; so that two minutes would have carried Ensign Dayton to the *Panama*, and within three minutes he could mount the bridge, demand and accept the surrender.

The effort made to prove that a longer time would have been necessary, by testifying that regulations require a boarding officer to examine papers, etc., etc., has no application to a vessel bearing an enemy's flag in time of war. Thus this entry of the signal at 6, "Strange vessel changed course to eastward" is founded on a fact, viz., that at 6 P. M. the *Indiana* did see the *Panama* change direction to the eastward, and must have signalled it immediately.

THIRD COMMENT.—Note in the "smooth log" the

statement: "At 6, headed for her," followed immediately by "the *Mangrove* was seen to head for the steamer." From the collocation of these sentences the idea is conveyed—this smooth log appearing to be a consecutive statement—that after the *Indiana* had headed for the steamer the *Mangrove* was seen to head for her. Captain Quevedo, Q. 3, p. 13, Rec. says *Mangrove* "steered towards us at 5.40." Yeoman Murray, a witness for the *Indiana*, Q. 3, p. 43, Rec. says, "about half or three-quarters of an hour after leaving the *Indiana* the *Mangrove* sighted the prize" and "altered her course to intercept her."

Chaplain Cassard, the other *Indiana* witness on board the *Mangrove*, says, p. 38, Rec. answering same interrogatory 3: "I left the *Indiana* and joined the *Mangrove*. A short while later, about 20 minutes, a strange steamer was sighted. The *Mangrove* and the steamer were approaching each other, the first headed for Key West and the steamer towards Havana. The *Mangrove* altered her course slightly to intercept the steamer."

There is still another witness and he occupies an equivocal position, but his testimony we will quote because it throws a flood of unintentional light on this particular part of the case. The witness Munson, whose evidence appears on pp. 190–197, Add. Rec. we were by some means induced to call to testify for the *Mangrove*, although he had been on the *Indiana* at the time of the capture as pilot. The court will judge from his evidence whether his testimony was a surprise to us, and we need cite no authority to show to this court that a party whom a witness takes by surprise is not to be allowed by the court to suffer therefor. The particular portion of this witness's evidence to which we call attention is contained in the letter of January 15, 1901, written by the witness to the counsel for the *Indiana* and introduced by them. At the bottom of p. 196 in this letter the witness, who

was the man up aloft, informing Captain Taylor as to what he saw about the time of the capture, says: "The steamer was then about 12 miles off and heading for the land. We then headed for the stranger, the *Mangrove* still keeping her course for Key West, evidently not having sighted the stranger. When we were within four or five miles of the stranger, and the *Mangrove* about three miles from us on our port bow, she suddenly changed her course so as to hail the stranger." This makes it clear that this man at least meant to testify that the *Indiana* had headed for the stranger *before the Mangrove did.* This is the very idea conveyed in the two consecutive sentences we have quoted. Possibly it was gotten from the report of their watcher who was up aloft, Mr. Munson.

FOURTH COMMENT.—The smooth log follows the last statement, *supra*, with "and at about 6.10 the steamer stopped." This has direct reference to the capture and we have already demonstrated, we think, that the steamer was in the act of stopping when the signal went off at 6.00 that she had changed her course, and it is indubitable that the capture was completed at 6.07.

FIFTH COMMENT.—The smooth log proceeds: "Later the *Mangrove* and the steamer, whose colors we made out to be Spanish, steamed slowly to the westward." As to the closing of the sentence, "steamed *slowly* to the westward," we remark that (speaking of what he could see from the *Indiana*) just before the two vessels "steamed slowly to the westward," Captain Dawson, signal officer of the *Indiana*, testifies, Q. 162, p. 21, Add. Rec. "My recollection is that I saw this boat, which appeared to be no more than a speck in the water somewhere between the two ships." How could people on board the *Indiana* tell, when a ship's boat looked like a speck in the water, whether the *Mangrove* and the *Panama*, when they started south a few moments later, were steaming slowly or rapidly? In

point of fact, the evidence is, as hereinafter cited, clear to show that the *Mangrove*, in view of the fact that it was near sunset, went with the prize as rapidly as possible towards the *Indiana* in order to get a crew to safeguard her when night should come.

We now ask the court to turn to pp. 35, 36, Record, and read the whole log consecutively. Following the statements already commented on we have: "At 6.45 fired shot across bow of steamer and the Spanish colors were hauled down at 6.48. Sent officer and prize crew of the following men [naming them]. *The prize proved to be the Panama," etc.* That "the prize" was deemed by those who made up this log as the prize of the *Indiana*, which had caused the Spanish flag to be hauled down and had put a prize crew on board, is apparent, not only from the collocation of the sentences, but also from the use that was made of this log, which, on the very next day, was set forth by the officers of the *Indiana* as their ground and only ground of prize in the *Panama*.

We think these considerations are sufficient to show that the smooth log of the *Indiana*, which was made up just after the transaction, was compiled in the midst of great excitement, and at a time when the officers who signed it did not clearly and fully comprehend the whole situation as it has since been developed.

Testimony of the Log as to Distances Run by the *Indiana* and the *Mangrove* from 5 o'Clock, When They Parted, till 6.07 o'Clock, the Time of the Capture.

Admiral Taylor's memory is several times at fault in his testimony. He would, of course, himself be glad to correct it by his log, which was not brought to his attention during the examination which took place more than three years after the transaction inquired about took place.

On p. 67, Add. Rec. in answer to the question whether he *continued going away* from the *Mangrove* until he turned to go towards the prize, he insisted that he did not, concluding his answer with: "I stopped the ship when I felt that my signals were plainly visible to the *New York*." Here he is mistaken. The steam-log of the *Indiana* on p. 202, Add. Rec. containing the record of orders from 4 to 8, shows stops at 4.31, when the *Indiana* and *Mangrove* were conferring, and again an order for stopping at 6.45, when the guns were fired. No other stop order is shown. This log runs, "Ahead full speed 5.05; slow speed 5.48"; *and this* latter *order was in force while the signalling was going on with the New York*, the time when the Admiral now thinks he stopped; and it so continued until the order "then full speed" (steam-log, p. 202, Add. Rec.) which must have been given at or before the time when the *Indiana* turned and headed for the steamer.*

Ensign Mustin, of the *New York*, appellants' witness (Rec. 52) says: The *Indiana* at the time of the signals (5.38 to 6 P. M.) was approaching this ship from the direction of the strange steamer. Captain Chadwick of the *New York*, also appellants' witness, says, answering X-Q. 10, p. 102, Add. Rec. "O yes; she [*Indiana*] was moving towards us till she turned."

This evidence shows that Admiral Taylor was also mistaken in the evidence upon which appellants rely for their calculation when under the head of "The *Panama's* Colors" they say, "When the first of these signals was made the *Indiana* was moving towards the *Panama*." Taylor (Add. Rec. 68) says she "continued to move towards the *Panama* between 5.55 and the moment of capture, 6.07, 12 minutes." Admiral Taylor, in testifying that the

* Admiral Taylor himself says (Add. Rec. middle p. 60) "when the gun was fired * * * there was a quickening of the speed," etc., and we think we have demonstrated that the firing of all three guns (the Admiral observed only one) took place about 6 o'clock.

Indiana turned towards the *Mangrove* and *Panama* before 6 o'clock, is contradicted not only by the above witnesses, but by his own log signed by him, and Lieutenant Decker, Rec. 35, saying, "At 6 headed for her."

Admiral Taylor is mistaken also in his memory as to the speed of the *Indiana*. He says, in answer to question near the botton of p. 74, Add. Rec.: "The greatest speed to be sustained and continued for several hours about 8½ knots; on one occasion for a few minutes at the battle of Santiago, 9½, but only for a few minutes."

Again, on p. 60, Add. Rec. near the middle of the page, speaking of the speed at which the *Indiana* went towards the *Mangrove*, he says: "I should say that the average of these speeds for that half hour ranged from 8½ to 7¾ knots; between these two would be the average of what we made, would be about that, from 8¼ to 7¾. In other words, in the neighborhood of 8 knots averaging."

The signal officer of the *Indiana*, appellants' witness says of that same speed (p. 26, answering Q. 219, Add. Rec.): "We put on all speed and probably made 10½ knots." Captain Chadwick, of the flagship, says (p. 98, Q. 12, Add. Rec.) when asked what speed the *Indiana* was making towards the prize, "I should say about 10 knots."

These differences are natural, especially after the lapse of three years. Men's memories vary. The steam-log book, whence all derived their original knowledge, is better evidence. "*Litera scripta manent.*"

The log of the *Indiana* shows in terms, without the aid of calculation, p. 202, Add. Rec. that on May 6, before her bottom was scraped at Guantanamo, the *Indiana* made 10.15 knots for two hours, and this must have been without pushing, as Captain Taylor testifies he was careful not to push her. But Lieut. Dyson shows that (when going towards the *Mangrove* she got this

exceptional order for "all possible speed") she was probably making 10.75 knots. This was the time when the steam-log shows she "captured" the *Panama*. Now the *Indiana* went, as shown by the steam-log, at full speed from 5.05 to 5.48, which was 43 minutes, and at slow speed from 5.48 until—the exact time is not shown at which the order "full speed with order to make 85 turns" was given; but this must mean the time when the *Indiana* "at 6 headed for her." A vessel that did not have time to signal and which for that reason "headed for her," certainly would not continue at a slow pace then, when, as we have shown, the stranger and the *Mangrove* were close together. The order for slow speed given at 5.48 was changed but once, and then to "full speed," with orders to make "85 turns." The only explanation of Admiral Taylor's recollection that he first went at moderate speed and then more rapidly, must be that it is based on the change to his next order for "all speed possible."

But leaving now the question of Admiral Taylor's memory, let us calculate with the above figures of speed before us the distance the *Indiana* had run southward from 5.05 when she left the point where she had parted from the *Mangrove* until 6 o'clock when she turned and "headed for her," the *Panama*. She was going, as we have shown, at full speed from 5.05 till she got the order to slow at 5.48.

At 10.15 knots, which allows 5.91 minutes to the mile, She made 7.26 knots during the 43 minutes from 5.05 to 5.48. Then came the order for slow speed, which continued on the above hypothesis for 12 minutes, from 5.48 to 6 o'clock. Counting this slow speed at 6 knots an hour, a mile in 10 minutes, and in the 12 minutes of slow speed we should have 1.2 knots, which added to 7.27 would make 8.47 knots she had run, away from the point where she parted from the *Mangrove*, at the time

she turned at 6 and ran towards the *Mangrove* and the *Panama* now close together.

The capture was at 6.07. Captain Taylor thinks he started back slowly (Add. Rec. p. 60). But we think he is in error, as we have shown, and that his first order must have been "full speed 85 turns," followed quickly by "all speed possible."* Allowing only 1.09 minutes for turning at 6 o'clock and for getting under full headway (Admiral Taylor says it requires 12 minutes from a condition of rest, Add. Rec. top p. 70), the *Indiana* would have made during the 5.91 minutes remaining till the capture at 6.07, just *one knot* towards the *Panama* and *Mangrove*, which being deducted from 8.47 knots she had run south, would have made her distance at 6.07 from the point where the *Mangrove* left her just 7.47 knots.

The *Mangrove* had run from the *Indiana*, starting at 5 o'clock, as the evidence shows, an hour—from 5 to 6. She could make 8 knots an hour at ordinary full speed, and was undoubtedly going at this speed during this period, which was employed partly in carrying the mail and partly in chasing a prize. If we deduct half a knot for the time she occupied in coming to a stop when she made the capture, we then have, distance by the *Indiana* 7.47+7½ knots by *Mangrove*=14.97 knots, which would measure the distance between the *Mangrove* and the *Panama* at 6.07, the time of the capture. This tallies singularly with the conclusion reached by Judge Locke, who, judging from the evidence then before him, submitted by all the parties, placed the speed of the *Indiana* at 10 and of the *Mangrove* at 8 knots; and, on this calculation, leaving conflicting opinions out of consideration, he decided that the distance of the *Indiana* at the time of the capture was "from 12 to 15 miles at the

* "We turned *hastily* * * * and made at once with *all speed* for the steamer above mentioned." Capt. Dawson, p. 4, Q. 9, Add. Rec.

least." (See Rec. p. 54.) No effort had then been made to minimize the speed of the *Indiana*, and, on the other hand, the Judge had not before him the *Indiana's* log which we have introduced showing that she actually did make during that "chase" 10.75 knots. The evidence of Captain Chadwick and Ensign Mustin, cited *infra*, was enough to convince the Honorable Judge that the *Mangrove* and *Indiana* were running substantially straight away from each other; and our calculation is for all practical purposes accurate, provided the two ships had run straight away from each other all the time. The only remaining question is, how much is to be deducted from the distances traversed by reason of the angles that may have been made by these two vessels in travelling from each other? The course of the *Mangrove* was, as testified by John Peterson, mate, in answer to Interrogatory 3, p. 25, Rec.: "To Key West, N. ¾ E." A point is 11.25 degrees and ¾ of a point is 8.43 degrees E. of N. Ollsen, quartermaster on the *Mangrove*, says, Q. 3, p. 22, Rec.: "On the road to Key West steering N. ¾ E. when we sighted strange vessel." Captain Everett says that he sighted a steamer to the northward and eastward and steered for her. (Q. 3, p. 31, Rec.)

Yeoman Murray, in his second examination, already quoted, said that the *Mangrove* did not chase the *Panama* at all; that they "were almost bows on." And the officer who was in the best position to judge of the relative positions of the three ships, the *Mangrove*, the *Panama* and the *Indiana*, was Captain Chadwick of the *New York*, which ship was farther south and had all the others in view, and he had a much stronger glass than any one else. His attention had first been called to the strange steamer by the *Wilmington*, and as the *New York* made no forward movement, it was simply an observer, lying, as Captain Chadwick says, "dead in the water." Captain

Chadwick says in his claim, p. 48 Rec.: "The *Panama* was about 30 miles N. N. E. from Havana when captured," thus in the line the *Panama* was taking from the channel around the east coast of Florida to Havana, and the map also shows that Key West is slightly east of north of Havana; thus verifying the statement of Peterson the mate and Ollsen the quartermaster of the *Mangrove* as to the course the *Mangrove* was pursuing. And Captain Chadwick further says in answer to Q. 4, p. 97, Add. Rec. speaking of the situation at 5.30: "The *Indiana* at this time was coming towards us in the line between that steamer and ourselves." The testimony of Ensign Mustin, of the *New York*, is to the same effect. "The *Indiana* at the time of the signals was approaching this ship from the direction of the strange steamer." (Rec. Q. 8, p. 52.) Here are no words that can be misconstrued. The testimony of these observers, Captain Chadwick and Ensign Mustin, is exact, satisfactory and convincing, and locates the three ships in their direction as to each other. The testimony of the quartermaster and the mate was in answer to the original and general prize interrogatories, when the points subsequently in dispute could not have occurred to them. Their answers are also definite, exact and satisfactory, and they were made shortly after the transaction.

We therefore reach the conclusion that the *Indiana* and the *Mangrove*, when they parted, went, the *Mangrove* 8.43 degrees east of north, and that the former, the *Indiana*, went so nearly south that, at 5.30, after having travelled toward the *New York* for 25 minutes, she was going in a direction which was about S. S. W. or 22½ degrees west of S. This was very little variation from a straight line. If the *Mangrove* at 5.40, as Captain Quevedo says, headed for the *Panama*, and if her course for 20 minutes was, as the testimony of Captain Everett

shows—and we call particular attention here to what he says about the wind and his having put on sails to increase his speed—N. E. (for twenty minutes), then it only remains to consider how much should be deducted from the above calculations for angles made. It would, we submit, be a very liberal deduction to take 1.47, practically 1½ knots, from the distance covered by these vessels when sailing away from each other in order to arrive at the distance between them at the time of the capture. That is to say, deducting from 14.97 knots 1.47 knots, we have—as shown by the log of the *Indiana* fairly interpreted, supplemented by testimony which is convincing, that the *Indiana* and the *Mangrove* at the time of the capture were 13½ knots apart.

The calculation we will now make, based upon the time the *Indiana* and the *Mangrove* were approaching each other after the capture, confirms and verifies this estimate, and here there is to be no allowance for diverging courses, because the ships were running straight for each other.

Distance *Mangrove* Travelled Towards the *Indiana*.

At 6.07, according to witnesses aboard the *Mangrove*, the boat had already gone over and Ensign Dayton had been landed on the *Panama*. (Q. 5, p. 105; Q. 3, p. 122; QQ. 45–47, p. 134; Q. 8, p. 137; Q. 15, p. 138; Q. 14, p. 158; Q. 7, p. 172; Q. 18, p. 184; all Add. Rec.) It must therefore have been shortly before 6.07 that the *Mangrove* and *Panama* stopped, and very shortly after 6.07 that they started towards the smoke of the *Indiana*. They started as soon as the boat returned, and while it was being hoisted. (QQ. 108–110, p. 117; Q. 20, 21, p. 149; QQ. 29–33, p. 155; QQ. 19–22, p. 162; QQ. 18, 19, p. 167; Q. 13, p. 173; all Add. Rec.)

About the middle of the stop, when the boat that had landed Ensign Dayton shoved off from the *Panama* to return, it was 6.07, and the vessels therefore got under way by 6.10. (See QQ. 241, 242, p. 28; Q. 311, p. 35; QQ. 322, 323, p. 37; p. 42; X-Q. 11, p. 80; Q. 17, p. 85; QQ. 13–21, p. 149; QQ. 28–34, p. 154, 155; QQ. 15–22, p. 162; Q. 48, p. 163; QQ. 14–19, p. 167; Q. 13, p. 173; all in Add. Rec.)

The *Indiana* was approaching while the *Panama* and *Mangrove* were stopped, and when they got under way they came towards the *Indiana*.

The length of the stop, according to a majority of the witnesses, was most probably not longer than 5 or 6 minutes, and it could hardly have taken longer to lower a boat, take an officer to the *Panama*, and return immediately, and as the *Mangrove* was anxious to reach the *Indiana* and get a full prize crew, they went at the best speed of the *Mangrove* till they were greeted with a shot at 6.45 by the *Indiana*.

Appellant's witness Murray, aboard the *Mangrove* says she and the *Panama* were under way together 35 or 40 minutes before the shot was fired, Q. 44, p. 95, Add. Rec; thus corroborating the testimony of our witnesses as to the time she stopped. The *Mangrove*, according to the preponderance of testimony, was making fully 8 knots.

"The *Indiana* was making full speed, between 10 and 11 knots, and the *Mangrove* was apparently making her best speed, which was several knots less, I don't remember exactly what—she was considerably slower." (Q. 9, p. 4, Add. Rec. appellants' witness. Captain Dawson.)

"Speed of *Mangrove* about 6 knots." (Near middle of p. 43, Add. Rec. Appellants' witness, Chaplain Cassard.)

"Not much more than 7 knots." (Near middle p. 59. Admiral Taylor, claimants' witness.)

"Doesn't think she could go over 8 knots." (Q. 32, p. 100. Capt. Chadwick, appellants' witness.)

"About 8 knots." (Q. 59, p. 112. Capt. Everett, appellee's witness.)

"Could not have gone less than that, (8 knots) as we pushed her to utmost." "Might have been little more than 8 knots." (Q. 37, p. 127; X-Q. 20, p. 131. Ensign Palmer, appellee's witness.)

"About 8 knots." (Q. 70, p. 143. Lt. Dayton, appellee's witness.)

"About 8 knots." (QQ. 36–44, pp. 150, 151. Appellee's witness.)

"About 8 knots." (Q. 35, p. 155; 10–13, p. 156. Appellee's witness.)

"Probably a little over 9 knots." (QQ. 9–13, p. 157; 24–26, pp. 158, 159; Q. 9, p. 160. Appellee's witness.)

"Between 8½ and 9 knots." (QQ. 12, 13, p. 167; 20, 21, p. 167; 37, p. 168; 4, p. 169. Appellee's witness.)

"About 8 knots." (11–13, p. 173; 20, p. 174. Appellee's witness.)

"Capable of 9½ knots." (QQ. 9–15, p. 188. Appellee's witness.)

The *Mangrove* practically started off at full speed and did not require more than two or three minutes to get under full headway. (Near top of p. 43, Add. Rec. Chaplain Cassard, appellants' witness.

Q. 100, p. 116. Capt. Everett, appellee's witness.

Q. 36, p. 126; QQ. 38, 39, p. 127. Ensign Palmer, appellee's witness.

Q. 69, p. 143. Lieut. Dayton, appellee's witness.

Q. 23, p. 158. Mate Peterson, appellee's witness.

The *Mangrove* in 35 minutes, at 8 knots, would have travelled 4.66 knots. If we allow that in the first 5 minutes she made only half this speed, then she made in the 35 minutes 4.33 knots.

37

Testimony of the Log.

The steam-log of the *Indiana* not only shows in terms that for two hours, a few days afterwards, the ship made 10.15 knots, but it also fortunately shows the actual number of revolutions her engines were making during this chase (p. 202, Add. Rec.), and Lieutenant Dyson, the engineer officer having the custody of these logs in the Bureau of Steam Engineering, shows that the speed resulting from these revolutions was closer to 10.96 knots than it was to 10.45 knots, and that probably 10¾ knots would have been about the speed made. This, notwithstanding the foulness of bottom of the *Indiana*, as his comparisons were with contemporaneous speed runs (pp. 198–200, Add. Rec.). In calculating, Lieutenant Dyson has been most liberal towards appellants, for in getting his average for 7 days, at 10.45 knots, he takes dates as far off as May 10, while the average for the nearest days would have given greater speed (Q. 7, p. 198, Add. Rec.).

The accuracy of Lieutenant Dyson's calculation is unquestioned. The *Indiana* was undoubtedly at 6.07, the time of the capture, approaching the *Mangrove* at the "best speed possible" and must have continued at that speed for 38 minutes from 6.07 till 6.45, when the log (Rec. p. 35) says "fired shot across bow of steamer," which was the time when her steam-log shows order was given to slow and stop engines (Add. Rec., p. 202). This steam-log does not show the minute at which the orders calling for "full speed with orders to make 85 turns," or the orders to make the "best speed possible" were given, but it does show that these orders followed while the order given at 5.48 for slow speed was in force. And it is quite certain that the first of these orders, "full speed with orders to make 85 turns," was given when, or as, the ship "headed for her at 6.00," because it would have been

quite unreasonable that when Captain Taylor started off at that time to investigate, because it was getting so late there was not time to rely on signalling, he would have gone at a slow rate, especially when he thought the Admiral "did not feel quite confident that the *Mangrove* was of sufficient force to make sure of the prize." And the order for "all possible speed," which must have increased the speed from say 10.15 to 10.75 knots, we assume tohave followed before 6.07, after which there was no firing, for Captain Taylor himself says that it was the firing that quickened his speed (near middle p. 60, Add. Rec.).

If, then, allowing for getting under full headway, we calculate, as previously, that the *Indiana* had turned at 6, and had, allowing for time lost in turning, made one mile towards the *Panama* at 6.07, the date of the capture, and that she ran thereafter at a speed of 10.75 till 6.45, during the 38 minutes she would have covered 6.82 knots. Add to this the distance travelled by the *Mangrove*, 4.33 knots, and we have 11.15 knots without counting the distance between the ships when the gun fired.

Testimony of the Gun.

Opinions vary as to the distance away of the *Indiana* when this shot was fired, as will be seen from the following testimony:

"A mile, possibly more." (QQ. 239, 240, p. 28, Add. Rec. Claimant's witness.)

"Thought one-quarter of a mile." (P. 70. Claimant's witness.)

"Five or six hundred yards." (Q. 15, p. 80. Claimant's witness.)

"I should judge about 2,000 yards." (Q. 3, p. 84. Claimant's witness.)

"I should say about a mile away." (Q. 58, p. 135. Appellee's witness.)

"About a mile and a half from us." (Q. 3, p. 123. Appellee's witness.)

"About a mile away." (Q. 42, p. 140. Appellee's witness.)

"Could not say exactly how far." (Q. 5, p. 151. Appellee's witness.)

"Can not exactly tell; inside of a quarter of a mile, I guess." (Q. 17, p. 156. Appellee's witness.)

"About 1,000 yards." (Q. 5, p. 211. Appellants' witness.)

"About 1,000 yards." (Q. 5, p. 218. Appellants' witness.)

"Probably half a mile." (Q. 5, p. 223. Appellants' witness.)

"About 500 yards." (Q. 5, p. 229. Appellants' witness.)

"Less than a mile and about half a mile." (Q. 5, p. 242. Appellants' witness.)

"Fifteen hundred yards." (Q. 5, p. 248. Appellants' witness.)

"Between 400 or 500 yards away." (P. 254. Appellants' witness.)

"Mile or two away." (Bottom p. 257. Appellants' witness.)

"Between 400 and 600 yards. (P. 261. Appellants' witness.)

We need not resort to these opinions—a guessing match. Major Waller, a witness for the appellants, fired the shot from the *Indiana* which struck very close to the *Panama*, in the direction he gave at an elevation of 4,500 yards. (Q. 9, p. 266, Add. Rec.; QQ. 17–25, pp. 267, 268, Add. Rec.) And the evidence of the gun, therefore, is that the

Mangrove, when this shot was fired, was at least 2.21 knots away. The witness Waller says approximately about 3 miles distant from the *Indiana*. (Q. 25, p. 268, Add. Rec.) But 4,500 yards is equal to 2.21 knots, and we are taking the testimony of the gun and not the opinion of the gunner. We have 6.82 knots (testimony of log of *Indiana*), 2.21 knots (testimony of *Indiana's* gun), plus 4.33 knots (testimony of concurring witnesses), and these together show that the *Indiana* was, at the time of the capture of the *Panama*, 13.35 knots away.

That the vessels must have been this distance apart at the time of the capture is corroborated in another and a very conclusive way. Lieutenant Dayton in his testimony states that a very short time, 5 or 10 minutes after he got on the *Panama*, he saw for the first time the *Indiana*, and what he first saw was her fighting-top. (QQ. 18, 19, p. 138, and X-Q. 12, p. 145, Add. Rec.) He then makes from Table No. 6 of "Bowditch Navigator," a standard work, a calculation as to how far the *Indiana* must have been away at the time he saw her fighting-top, based upon the height of the fighting-top and the height of the bridge of the *Panama*, upon which he was standing, above water level; showing that an object the height of this fighting-top, viewed from the height of the bridge where he was, would be visible above the horizon at 11.4 miles. (QQ. 22, 23, pp. 138, 139, Add. Rec.) In other words, he establishes by a mathematical calculation, the correctness of which is nowhere disputed, that some five or ten minutes after the capture the *Indiana* was still something over 11 miles off.

Indiana's Calculation.

Counsel (p. 59 of brief) make a calculation of the distance apart of the *Indiana* and *Mangrove* as shown by the speed, putting them 7.37 knots without considering the

distance when the gun was fired; yet 7.37 knots is beyond the limit of signal distance as fixed by the preponderance of evidence, or even by the preponderance of the *Indiana's* own evidence. The only opinions that signals could be read at that distance under any circumstances are:

1. Admiral Taylor, near bottom p. 64, Add. Rec.
2. Major Waller, QQ. 41, 45, p. 269, Add. Rec.

That the distance at which they can be read is less than 7.37 knots:

Indiana's own Witnesses.

1. Captain Dawson, Q. 24, p. 6; QQ. 60 and 64, p. 10, Add. Rec.
2. Chaplain Cassard, near top of p. 50, Add. Rec.
3. Gunner Mallery, Q. 26, p. 81, Add. Rec.
4. Carlos, Q. 6, p. 211, Add. Rec.
5. Blackiston, Q. 6, p. 218, Add. Rec.

Appellee's Witnesses.

6. Captain Everett, Q. 52, p. 111, Add. Rec.
7. Ensign Palmer, Q. 21, p. 125, Add. Rec.
8. Lieutenant Dayton, QQ. 31 and 32, p. 139, Add. Rec.

Impartial Witness.

9. Commander Winn, Prize Commissioner, p. 53, Rec.

By the very lowest speed counsel can possibly get from any of the evidence, they are forced to the conclusion that the vessels were 7.37 knots apart; and to bring their calculation within signal distance, they ask that the opinions of the two witnesses, Admiral Taylor and Major Waller, outweigh the testimony of nine other witnesses, five their own witnesses, three ours, and one a totally impartial witness.

That the court should be asked to consider the vessels in signal distance when 7.37 knots apart, is surpassed by

asking it to accept the calculation of 7.37 knots. That calculation—

1st. Does not include the distance the vessels were apart when the *Indiana's* gun was fired.

2d. It is based on a speed of 8 knots for 38 minutes, for the *Indiana*. That she was not making less than 10 knots is supported only by the opinion of the captain and the chaplain and the supposition of Major Waller. That she was making as much as or more that 10 knots we have the opinion of Captain Dawson, Lieutenant Decker and Captain Chadwick, witnesses for appellants, and Captain Everett, Ensign Palmer, and Lieutenant Dayton, for appellee, and the log.

3d. The calculation is based on a speed of 6 knots for 23 minutes to the *Mangrove*. We will not discuss the correctness of the 23 minutes, though the preponderance of testimony is that the vessels did not stop 15 minutes, and the *Mangrove* was therefore under way longer than 23 minutes. But as to this speed of 6 knots, you are asked to accept the testimony of Chaplain Cassard as against all the other witnesses. He alone gives her a speed as low as 6 knots. Opposed to his opinion is to be found, under appellants' witnesses:

1. Captain Dawson, who says the *Indiana* was "making full speed, between 10 and 11 knots, and the *Mangrove* apparently her best speed, which was several knots less." Q. 9, p. 4, Add. Rec. Several knots less certainly does not mean 6 knots.

2. Admiral Taylor, "Not much more than 7 knots." Near middle of p. 5, Add. Rec.

3. Captain Chadwick. Does not think she could go over 8 knots; that she was making at the very lowest 8 knots.

Nine witnesses for appellee, whose testimony is cited

under the heading "Distance *Mangrove* travelled towards *Indiana*," showing she was making at least 8 knots.

Make the calculation counsel has selected, substituting the speeds the evidence shows, and we have, without considering the distance the vessels were apart when the shot was fired:

Indiana, 38 minutes, at 10¾ knots	6.72 knots.
Mangrove, 23 minutes, at 8 knots	3.6
Total	10.32 knots.

You are further asked to assume that the conditions upon this occasion for reading signals were the most favorable. This we contend the evidence shows was not the case.

Admiral Taylor, when asked "Now, what would you call the distance which under most favorable circumstances flag signals could be read," answered:

"Under most favorable conditions of light, clearness of atmosphere, and everything possible, up to 8 miles, under favorable circumstances." (Near bottom p. 64, Add. Rec.)

He also states the most favorable circumstances to be:

"If the sun is shining without any cloud, as low down as possible, but if slightly obscured by haze or clouds, it should be an hour before setting; this would give the most favorable conditions." (Near top p. 65, Add. Rec.)

And when asked "What were the conditions c. ıat afternoon as to atmosphere," he answered:

"My recollection is, that it was favorable above the average, as far as clearness and distinctness of distant objects went—of this I am confident." (Near middle p. 65, Add. Rec.)

Above the average is not a direct statement that the most favorable conditions existed. Colonel Waller states:

"The atmosphere was clear eastward; hazy towards land, but the *Indiana* was between the two ships (the *Mangrove* and *Panama*) and the land." (Q. 7, p. 266, Add. Rec.)

That it was even so hazy that light signals could have been used on the *Panama*, though as a general rule they would not have been used, appears from the testimony of Yeoman Murray, a witness for appellant and on the *Mangrove*. (QQ. 28–33, p. 94, Add. Rec.)

Captain Dawson, referring to the position of the sun at the time of the capture, says:

"A. I do not consider that it was either particularly favorable or unfavorable. There was ample light and its position would not be such as to interfere with a clear vision between the stations."

He admits that it would be harder to distinguish colors at 15 minutes before sunset than an hour before; and when asked—

"Q. Well, now, if it would be harder to distinguish colors at 15 minutes before the sun sets at a distance than at an hour before the sun set, would you say that fifteen minutes before the sun set is the most favorable condition under which to read signals?

"A. No, sir." (QQ. 268–274, pp. 30, 31, Add. Rec.)

Commander Everett, a witness for the appellee, states that the conditions at the time of the capture, for reading signals, were not so favorable as they would have been a half hour earlier. (QQ. 48, 49, p. 111, Add. Rec.)

Ensign Palmer, a witness for appellee, stated that near noon, when there is most light, is the most favorable time for reading signals, as everything depends upon distinguishing the colors in the flags; and that the conditions were fairly good for that time of day, but it is very hard

to read signals about sunset, as the light is generally not good. (QQ. 22, 23, p. 125.)

Lieutenant Dayton, a witness for appellee, states the conditions at the time of the capture as fairly good; probably not as good as at noon, or near noon. (Q. 33, p. 140, Add. Rec.)

Thus the evidence does not bear out the supposition that the conditions were the most favorable.

Distances at Which Signals Can Be Read.

THE FOLLOWING EVIDENCE ALL RELATES TO SIGNALLING WITH FLAGS OF AT LEAST THE USUAL SIZE, AS NO QUESTION PUT MENTIONS OR SUGGESTS SMALLER SIZES. NO WITNESS WAS ASKED HOW FAR BOAT-FLAGS, SUCH AS THE "MANGROVE" HAD, WERE EVER KNOWN TO HAVE BEEN USED. THESE WERE ONLY ABOUT ONE-SEVENTH THE USUAL SIZE:

Commander Winn, a United States Prize Commissioner before the Court at Key West, estimates 5 miles as a maximum distance at which signals of every description, day or night, can be distinguished and read. (P. 53, Rec.) The opinion of witnesses examined in this case as to the distances at which day signals can be read are to be found as follows:

"Supposedly 5 or 6 miles, but not tried over a measured distance." (Q. 24, p. 6; Q. 60, p. 10; Q. 64, p. 10, Add. Rec. Capt. Dawson, witness for appellants.)

"Six and two-thirds miles, under certain conditions." (Chaplain Cassard; near top of page 50, Add. Rec. Witness for appellants.)

"Under most favorable conditions of light, clearness of atmosphere, and everything, possibly up to eight miles, under favorable circumstances." (Near bottom of p. 64, Add. Rec. Admiral Taylor, for appellants.)

"Under most favorable circumstances about 5 miles." (X-Q. 26, p. 81, Add. Rec. Mallery, for appellants.

"Extreme distance at which can be read about six miles, under favorable circumstances, with a powerful glass." (Q. 52, p. 111, Add. Rec. Captain Everett, witness for appellee.)

"Four and a-half to five miles under the most favorable circumstances." (Q. 21, p. 125, Add. Rec. Ensign Palmer, witness for appellee.)

"Between 4 and 5 miles." (QQ. 31, 32, p. 139, Add. Rec. Lieutenant Dayton, witness for appellee.)

"Read signals one mile." (Q. 6, p. 211, Add. Rec. Carlos, witness for appellants.)

"Judge had read signals about 7 miles, from what officers told him." (Q. 6, p. 218, Add. Rec. Blackiston, for appellants.)

"About 8 miles, but that is very close measurement." (QQ. 41–45, p. 269, Add. Rec. Major Waller, for appellants.)

The evidence of witnesses who give reasons for their opinions, such as having read or failed to read signals at a known distance, justifies the conclusion that 5 miles is very close to the maximum limit that signals with the usual flags can be read with any certainty, under ordinarily favorable circumstances, and that beyond that distance reading them is a matter of great uncertainty, depending upon such a variety of circumstances as to make it almost impossible to say, without an actual test, whether a signal would be intelligible. The reading of flag signals consists not only in recognizing objects, but in distinguishing colors. The hour of sunset in the neighborhood of the occurrence was, April 25, 1898, 6.25 P. M. (P. 203, Add. Rec.) The capture, therefore, took place about 18 minutes before sunset.

Testimony bearing upon this time for reading signals as favorable or unfavorable:

QQ. 273, 274, pp. 30, 31; pp. 64, 65; p. 71; Q. 22, 23, p. 125; QQ. 48, 49, p. 111; QQ. 18, 19, p. 131; Q. 33, p. 140; QQ. 28–30, p. 150; Q. 145, p. 269, all Add. Rec.

According to one witness for appellant, who was on the *Mangrove*, it was a little hazy and light signals could have been used. (QQ. 29–33, p. 94; QQ. 28, 29, p. 150, all Add. Rec.)

Admiral Taylor is the only witness who gives the most favorable hour for reading signals as close to sunset. We think it is common experience that shortly before sunset, in the stillness of the dying day, with a favorable background, the outlines of objects loom up with particular clearness, and for the very reason that there is not sufficient light to distinguish colors in objects, and the mind is not diverted by distinctions. A mountain as night approaches becomes a mountain, a tree a tree, and their outlines loom up because the light does not permit one to distinguish on the mountain woodland and field, depression and eminence; or in the tree the colors of branch and leaf.

Boat Signals on the *Mangrove*.

The *Mangrove* had on board only boat-flags, 3 x 4 feet. (QQ. 48, 49, p. 129; Q. 39, p. 140, Add. Rec). Regular navy signal flags are about 8 x 11 feet (Q. 48, p. 129, Add. Rec.) or even larger, if Captain Davison's estimate be correct. (QQ. 50–54, p. 9, Add. Rec.) But take them at 8 x 11, which approximates their actual size, 8¼ x 11, sufficiently for the calculation, and there will be 88 square feet of surface to see in a regular navy signal flag, as against only 12 square feet in a boat-flag, or one is over 7 times the size of the other.

The court judicially knows that a flag presenting a surface of 12 feet can not be read as far as one having a surface of 88 feet, but it can not know without evidence what the difference would be. For want of evidence of this point appellants' case must fail.

Colonel Waller is, as we remember, the only witness who hazards the opinion that signals with boat-flags could have been read if they had been made at the time spoken of. (Q. 40, p. 269, Add Rec.) His opinion is not only unsupported by any other witness, but he does not give any instance where boat signals were known to have been read at 3, 4, 5 miles, or any other distance.

There is testimony bearing upon the distance at which other day signals could be read.

1st. WIG-WAG SIGNALS.—Can not be read as far as flag signals, so they need not be considered.

2d. SEMAPHORE SIGNALS.—Not in general use in the navy. (For evidence, QQ. 95–99, p. 13, Add. Rec.) The *New York* was the only vessel equipped with semaphore signals.

3d. SOUND SIGNALS.—(See Q. 34, pp. 7–8, Add. Rec.; Q. 107, p. 14, Add. Rec.; Q. 151, p. 20, Add. Rec.) From this testimony and reference to the signal book, it appears that sound signals are not used in the day, except in a fog, mist, or falling snow. (QQ. 56–57, p. 142, Add. Rec.) The *Mangrove* could not have made whistle signals. (See Q. 34, p. 7, Add. Rec., appellants' own witness.)

Gun Signals.

For testimony, see Q. 33, p. 7; QQ. 120–140, pp. 16–18; Q. 145, p. 19; Q. 159, p. 21; QQ. 316–319, p. 37; p. 62; p. 72; p. 73; QQ. 18–25, p. 81; QQ. 74–75, p. 113–114; QQ. 28, 29, pp. 125, 126; QQ. 6–7, p. 130; QQ. 55–62, p. 142, all Add. Rec.

Under the head of Sound Signals the Signal Code says:

"At night, or in a fog, mist, or falling snow by day or night, sound signals may be made with gun, bell, fog horn or steam whistle.

GUN: In case of extreme urgency guns may be fired, using the General Signal Book. The numbers will be made as in the numerals of the Navy Code," etc. (Q. 57, p. 142, Add. Rec.)

While the code prescribes, under the circumstances above stated, that sound signals may be made by guns, all the testimony is that sound signals have never been so made in our own or any other navy. Even if gun signals could have been made and understood, the distance at which such signals could have been read is absolutely unknown. Sound is most variable. In one direction guns might be heard much further than ordinary signal distance, while in another they could not be heard as far as is now ordinarily considered signal distance.

Admiral Taylor says guns are at times heard from 80 to 100 miles, under rare conditions of atmosphere (just above middle of p. 73, Add. Rec); other witnesses have heard guns 30 miles at sea (Q. 30, p. 103, Add. Rec.; Q. 2, p. 229, Add. Rec.); yet it could hardly be contended that signal distance is as far as a gun could be heard, and no witness ventures an opinion as to what is signal distance by guns. Gun signals are peculiarly sound signals and so defined by the code, yet none of the witnesses who theorize regarding the same are certain that they heard the guns fired on the *Mangrove.*

Captain Dawson's testimony finally sifts down to his not remembering hearing the report. (QQ. 10–12, p. 5, Add. Rec.; 75–77, p. 11; 332–334, p. 38, Add. Rec.)

Admiral Taylor says: "Saw smoke shoot from the muzzle of the gun (only one). Can not remember whether

I heard the sound." (Just below middle of p. 58, Add. Rec.)

Gunner Mallery is not exactly clear in his mind as to whether he heard the report of the gun (one). (Q. 14, p. 78, Add. Rec.)

Colonel Waller, asked whether he saw or heard this shot, states: "I saw it. I saw the smoke from the gun." (5, p. 266.)

Thus all the chief witnesses for the appellants, and all who discuss gun signalling, either did not hear the guns that were actually fired, or are uncertain whether they did.

The testimony of other witnesses, some of whom use the expression "seeing" the guns fired and some "hearing" them, as will appear further on, is too indefinite and unreliable for their testimony to warrant any conclusions favorable to appellants, when none of the experts on gun signalling heard the report of a single gun. That signals could be made intelligently by guns in time of war, so as to spell out words, as it is claimed the signal code intends, can not be shown. The most that could be gotten out of gun firing would be an intimation that something was going on, but just what could not be determined.

The signal book, however, was produced by a witness for the appellee, and shows that no provision is made for gun signalling at all under the circumstances that existed here.

As stated in the brief of counsel for the *Indiana*,

"The test made by this statute is, whether the claiming vessel was within signal distance of the capturing vessel; that is, could the capturing vessel signal to the claiming vessel?"

We agree with counsel as to the correctness of this test, but the case fails completely to come up to the test.

It has not been shown by a single witness the distance at which boat signal flags, 3 x 4, the only kind aboard the *Mangrove*, can be read.

Likewise there is not a particle of evidence of how far gun signals can be read. In the brief for the *Indiana* it is stated:

"The testimony agrees in establishing the following facts: * * *

"2. They (witnesses on the *Indiana*) also saw or heard the firing of one or more of the *Mangrove's* guns."

This conclusion is fairly stated. The *Mangrove* fired three guns; and if the sum of all the evidence is, that the witnesses "saw or heard the firing of one or more" of these guns, then it is clear the *Mangrove* could not have made with her gun signals the number of and the intervals between which could be noted. The impossibility of signaling by guns is from the evidence so conclusive that it is needless to discuss whether gun signalling be within the statute.

Speed of the *Indiana*—Other Evidence.

Her steam-log at the very time is, as heretofore stated, the best evidence of the *Indiana's* speed, and its correctness is not questioned. We here refer to other evidence corroborating the log only because a few witnesses now attempt to minimize the speed of their ship. *In preparatorio* there were no answers belittling the *Indiana's* speed, Lieutenant Decker (Q. 3, p. 40, Rec.) and Captain Dawson (Q. 5, p. 41 Rec.), both of the *Indiana*, each gave her speed as about 10 knots. Captain Dawson, re-examined, still gives her a speed of over 10 knots; and when called upon to figure the distance away of the *Indiana* at the time of the capture, based on statements he had made, demonstrated mathematically that the *Indiana*,

at the capture, was some 9.6 knots from the *Mangrove*. (QQ. 215–259, pp. 26–29, Add. Rec.)

Thereupon the chaplain was put forward as an authority on speed, and he swore the *Indiana's* limit down to 7 or 7½ knots per hour; yet, when asked to calculate the *Indiana's* distance away by the time the two vessels took to meet, on his own statements as to the speeds they were making and as to how long the *Mangrove* stopped, he demonstrated that the *Indiana* must at the time of the capture have been 6¾ knots away (Add. Rec. p. 49) and that without including the distance apart the vessels were when the *Indiana* fired, at 6.45 P. M. (Add. Rec. pp. 50–51), the testimony of the gun heretofore cited showing that this distance, to be added, was 2.21 knots.

The testimony of the next witness, Admiral Taylor, then captain commanding the *Indiana*, we have already commented on. He seems to have had an unrealized apprehension that his vessel would give out, which may have been justified from the fact that though built for a 15-knot ship she had become capable of only between 10 and 11 knots.

Ensign Palmer, who was on the flagship at the time, testifies that at the close of the war, when the fleet made its home voyage, the *Indiana* was one of the number; that the voyage was made in about 5 days; that the speed of the squadron was 10 knots, as they were due to arrive in New York on a certain day; that after running for two or three days at that speed the *Indiana* signalled, "We can not maintain the present speed," and that the flagship then signalled, "Make the best of your way to New York," and the squadron proceeded; that thereupon the speed of the squadron was increased from one-half a knot to a knot; that this speed was maintained until New York was reached, and that the *Indiana* did not drop behind,

but maintained the increased speed, arriving with the rest of the squadron (Q. 44, p. 127, 128, Add. Rec).

This testimony of Ensign Palmer is nowhere disputed, though the logs of the vessels have at all times been available to the appellants to disprove the statement. Between the time of the capture of the *Panama* and the return to New York the *Indiana* was never where more than minor repairs could have been made to her engines.

Evidence of the speed the *Indiana* was making, or could make, is as follows:

Indiana less than 10 knots—

1. Chaplain Cassard (*Indiana*), p. 48, Add. Rec.
2. Admiral Taylor (*Indiana*), p. 60, Add. Rec.
3. Colonel Waller (*Indiana*), Q. 14, p. 267.

Indiana 10 knots or over—

1. Steam-log.
2. Ensign Palmer, appellee, trip home from Santiago.
3. Captain Everett, appellee, Q. 67, p. 113.
4. Ensign Palmer, appellee, Q. 60, p. 135.
5. Lieutenant Dayton, appellee, Q. 72, p. 143.
6. Captain Dawson (*Indiana*), Q. 5, p. 41, Rec.; Q. 9, p. 4, Add. Rec.; QQ. 223, 224, pp. 26, 27, Add. Rec.
7. Lieutenant Decker (*Indiana*), Q. 3, p. 40, Rec.
8. Captain Chadwick (*New York*), Q. 12, p. 98, Add. Rec.

Indiana's Chief Witnesses — Contradictions.

Indiana's brief says, page 25, that when examined after three or four years "differences of recollection do not detract from the good faith of the witnesses." Admitted; but such differences, *if material*, do detract materially from the weight of their testimony. We call attention to the differences between the three principal witnesses of the *Indiana*, and also to some differences with the *Indiana's* log.

1. Estimates of distances of shot fired at 6.45 from

Indiana to the other two vessels: Captain Taylor, ¼ to ½ mile; Captain Dawson a mile or more; Colonel Waller, 3 miles.

2. Captain Dawson, Q. 9, p. 4, Rec.: "When the *Indiana* turned back to go towards the *Panama*, we *turned hastily* before reaching the *New York*, putting the helm hard over, and *made at once with all possible speed* for the steamer above mentioned." Admiral Taylor, p. 60, Add. Rec.: "We *were not in haste* when we first started towards the prize." Lieutenant Decker of *Indiana*, p. 40, Rec. 40, Int. 3: "About 6 headed for her, agoing about 10 knots."

Captain Dawson's reason for starting back hurriedly was: Upon *becoming convinced*, as both the officer of the deck and I were talking with Munson, that *she was a Spaniard* and probably the *Panama*." (Rec. *supra*.)

Admiral Taylor: "I *interpreted the signal* [on the flagship] to indicate a wish to have me investigate." (Add. Rec. top p. 58.)

3. Captain Dawson gives speed going back, 10–11 knots. (Ev. *supra*.) Admiral Taylor, average 8 knots, 10 impossible.

4. Taylor, p. 58, Add. Rec.: "I saw the boat distinctly * * * My impression is that I saw it first without binoculars, and that I afterwards used binoculars and saw it more plainly." Add. Rec. p. 63: "I saw there were people in the boat."

Dawson used spyglasses (stronger than binoculars), Q. 16, p. 5, Add. Rec.: "And the boat appeared no more than a speck on the water.

5. Dawson says nothing about the *Indiana* stopping during the southward run. Taylor, Add. Rec. p. 67, says: "I stopped the ship * * * My recollection is I stopped the engines." Asked the length of the stop, he says, p. 68: "I can not remember, but I should say five minutes." Steam log shows other stops during this

period (p. 202), but none here, and the Admiral is further shown to be in error by Captain Chadwick (X-QQ. 9 and 10, p. 102, Add. Rec.), and Lieutenant Mustin (Q. 9, p. 51, Rec.), both on the *New York*, which was "lying dead in the water." Add. Rec. Q. 11, p. 98, Mustin saying, "The *Indiana* at the time of these signals was approaching this ship," etc.; and Captain Chadwick, "She was moving towards us till she turned."

6. Dawson's reason for firing the gun at 6.45: "Because we saw the Spanish flag flying." (Q. 347, p. 40, Add. Rec.) Taylor's reason for same, bottom p. 61: "Primarily, for fear prize would escape."

We have already called attention to the log's material contradiction of Admiral Taylor's memory about the speed of the *Indiana*, and the smooth log which shows "he started back about 6," instead of 5.55 as he says.

7. Colonel Waller saw no boat, but, Q. 5, p. 266, Add. Rec.: "I saw the smoke from the gun."

The only four witnesses examined for the *Indiana*, who occupied positions of vantage, were Captain Taylor, Captain Dawson, Apprentice Lindsay, on the bridge, and Colonel Waller on top of the turret. Of these, Lindsay is to be eliminated, because he is shown, as hereinafter set forth, to have sworn falsely.

The other thirteen witnesses whose observations on the *Indiana* are relied on, were all on deck. The *Indiana* had at least twenty-five officers who were not called. Most of them were probably on deck during the chase. They would have been the most intelligent observers. The presumption is that no one of them was willing to say he saw anything from the deck that would help his case.

It is to the credit of the probably 500 enlisted men on the *Indiana* that the testimony of only thirteen in all has been collected, from widely separated parts of the world, as counsel's brief sets forth, who have volunteered to say

that they saw from the deck, and the most of them with the naked eye, objects which were not only invisible to commissioned officers on deck, but which were also, *e. g.*, the number of people in the boat, invisible to officers above with glasses. A few of them saw nothing of importance. The testimony of those who say they did is shown by the brief analysis given further on to be inherently worthless.

Apparent contradictions aside, it can not be, even according to the *Indiana's* calculation of distances run, that there was a line of vision from the *Indiana's* deck to the boat in the water.

Opinions as to Signal Distance Based on Recollections of What Witnesses Saw.

On opinions that the *Mangrove* was only so many miles away, witnesses base opinions that the *Indiana* was within signal distance by flags. These opinions it is attempted to strengthen by evidence, first, as to hearing or seeing guns fired by the *Mangrove*, and second, of seeing a boat in the water between the *Mangrove* and the *Panama*. But it is nowhere shown that one can read flag signals a distance he can see or hear a gun fired, or see a boat. Nor is there any attempt whatever to show that one could distinguish the color of a 3 x 4 boat-flag as far as a fifteen-foot boat could be seen. Captain Dawson considers the relation between the distance at which you might see a flag, or see smoke from a gun, nothing more than guesswork (QQ. 83–90, pp. 12, 13, Add. Rec.), and Captain Chadwick, in answer to the question, "Is the distance at which you could see smoke any measure of the distance at which you could read flag signals?" says: "No, I should say not; because you can see the form of signals without being able to see their colors. The visibility of signals depends almost altogether upon the direction in

which the light falls upon them with respect to the position of the observer. Thus, in order to read signals well, you must have the light at your back and you must be between the light and the signals" (Q. 31, p. 103, Add. Rec). These are both witnesses for the appellant. Captain Chadwick also says guns can be heard 30 miles (Q. 30, p. 103, Add. Rec.), and Admiral Taylor that they have been heard 85 to 100 miles (p. 73, Add. Rec.), and no one puts the extreme limit for reading flag signals beyond 8 miles.

Admiral Taylor states that with binoculars and spyglasses, respectively, you can see a boat from 4 to 6 miles (Add. Rec. p. 63). Still he can not give an approximation of how many times binoculars magnify (p. 63, Add. Rec.); and gives no reason for fixing on four or six miles respectively.

Ensign Palmer states that over a measured distance of 5 miles not only had he seen boats but had been able to distinguish which ships the boats belonged to; also that smoke from a gun at sea can be seen about 10 miles (QQ. 30–33, p. 126, Add. Rec.; 8–13, p. 130, and 17, p. 131, Add. Rec.)

Testimony As To Seeing a Boat.

QQ. 13–16, p. 5; 160–178, pp. 21–22; 325–330, pp. 37, 38, all Add. Rec. Captain Dawson.

Pp. 58, 62, 63, Add. Rec. Admiral Taylor.

QQ. 16–23, p. 78; 7–10, p. 80, Add. Rec. Gunner Mallery.

QQ. 8–11, p. 84; 10–14, p. 85; 18–20, p. 85, Add. Rec. Perkins.

QQ. 8–10, p. 210; 4, p. 211, Add. Rec. Carlos.

QQ. 9, 10, p. 216; has seen boats at sea about 8 miles; 3, p. 217 Add. Rec. Blackiston.

QQ. 9, 10, p. 222; seen boats perhaps 10 miles; 3, p. 223, Add. Rec. Abbott.

QQ. 9, 10, p. 228, Add. Rec.; seen small cutters 8 or 9 miles, steam launches 7 miles; Q. 3, p. 229, Add. Rec. Lindsay.

QQ. 9, 10, p. 240, Add. Rec.; seen a boat at sea about 8 miles; Lee. Between 6 and 7 miles; Geary; Q. 3, pp. 241–242, Add. Rec.

Relative to seeing or hearing a gun:

QQ. 10–12, p. 5; 331–338, p. 38, Add. Rec. Captain Dawson.

QQ. 11–15, pp. 77, 78; 18–24, p. 78, Add. Rec. Gunner Mallery.

Q. 6, p. 216, heard guns fired 10 miles; Q. 2, p. 217, Add. Rec. Blackiston.

Q. 7, p. 222, Add. Rec; heard guns fired 9 miles; Q. 2, p. 223, Add. Rec. Abbott.

Q. 7, p. 228, heard gun fired 30 miles; Q. 2, p. 229. Lindsay.

Q. 7, p. 234, Add. Rec., heard gun fired at sea about 1 mile; Q 2, p. 335, Add. Rec. Coffee.

Q. 6, 7, pp. 239, 240, Add. Rec., heard gun fired about 10 miles; and about 9 or 10 miles respectively; Q 2, p. 241, Add, Rec. Lee and Geary.

Saw smoke, Q. 5, p. 266, Add. Rec. Colonel Waller.

All these witnesses to seeing the boat, or seeing and hearing a gun fired, are very indefinite as to other occurrences which naturally ought to have impressed themselves upon their minds. The boat is described as anywhere from the size of a speck to that of a bath tub.

Some describe it as one kind of a boat, some as another; some say it was dark. Some testify to seeing people in it, some none. Some testify that six or eight people were in it, which is about the usual boat's crew. The testimony of those on the Mangrove in a position

to know and whom Chaplain Cassard and Mr. Murray certainly had the opportunity to contradict, is that there were only three people in the boat when it went over, and two when it came back and that the boat was white.

QQ. 24, 25, p. 109, Add. Rec.—Captain Everett. Q. 15, p. 149; QQ. 6–9, p. 151, Add. Rec.—Chase. Q. 15, p. 156, Add. Rec.—Overn. QQ. 11–13, p. 162, Add. Rec.—Hansen. Q. 16, p. 167, Add. Rec.—Ellmore.

In preparatorio no one testified about either having seen the boat or the gun fire. Everybody aboard the *Indiana* knew within some three-quarters of an hour after the capture that the little lighthouse tender *Mangrove*, unaided, had brought the *Panama* to the *Indiana* in charge of an officer from the *Mangrove*, and must have known that the *Mangrove* did not put an officer aboard the *Panama* without sending a boat across, and that a gun was invariably fired in making a capture.

Recollection as to the boat and gun, sometimes guns, appears to have been singularly stimulated after it was learned that officers who had glasses had testified to seeing a boat and smoke.

Opinions as to Signal Distance—Analysis of Testimony.

1. Captain Dawson.—Of opinion that vessels were within signal distance at time of lowering boat from *Mangrove*. (QQ. 26, 27, p. 7, Add. Rec.) Opinion distance to *Mangrove* then as probably between 4 to 6 miles. (Q. 31, p. 7, Add. Rec.) Estimates the distance at which flag signals can be read, under favorable circumstances, at from 5 to 6 miles. (Q. 64, p. 10, Add. Rec.) But has no distinct recollection of ever determining the extreme limit of signal distance, and 5 or 6 miles only an estimate of his, as the distance was not measured or known at the time. (Q. 24, p. 6; Q. 60, p. 10, Add. Rec.)

His opinions of distance vessels were apart and that he could have read signals related to the time the boat was lowered; yet he never saw the boat lowered. (Q. 160, p. 21, Add. Rec.) And we submit he was none too certain about having seen a boat. (QQ. 160–178, pp. 21, 22, Add. Rec.)

2. CHAPLAIN CASSARD.—*Indiana* within signal distance when *Mangrove* and *Panama* stopped. (Midway p. 44, Add. Rec.) In his opinion the distance away of the *Indiana* was 3 or 4 miles. (Near middle of p. 48, Add. Rec.) Also states (near top of p. 50, Add. Rec.) that under certain conditions he thinks signals could be read 6¾ miles; yet he states (near the middle of p. 48, Add. Rec.) that he had never given or received signals, and these were not signals of a character it behooves a chaplain to heed.

3. ADMIRAL TAYLOR.—Asked *Indiana's* distance from the *New York* when exchanging signals he states he might form some estimate by reference to the *Indiana's* log, and could have formed that estimate at the time, but at this lapse of time he could not form a close estimate. (About middle of p. 75, Add. Rec.) Without having the log, however, he gives an opinion that the *Mangrove* was in signal distance of the *Indiana*.

He is very emphatic, and says: "Yes, within good signal distance. I did not doubt then, and I do not doubt now, that any signals, either ordinary or extraordinary, would have been plainly perceived and recognized by us, and answered by us." (Near middle p. 59, Add. Rec.) Still, he does seem to have some doubt as to having been in such good signal distance, when questioned as to why he did not signal to the *Mangrove*, for he says: "At great distances it takes some time" to signal, and refers to its always being slow when you come near the limit. (Near middle p. 69.) Still, he places the

limit of signal distance, under the most favorable circumstances, up to eight miles; and he undertakes to put the *Mangrove* at a much closer distance. He says she did not appear to be more than 3½ to 4 miles away, near bot. p. 65, Add. Rec. and thinks he first saw the boat without glasses, and then with glasses, and that with good eyesight with the naked eye one could see a boat only from 2½ to 3 miles, and with binoculars four miles. His recollection as follows is clearly shown to have been inaccurate: Of the varying speeds at which they were going during the half hour following the capture; of the *Indiana* not being able during the war to maintain a continuous speed of over 8½ knots; that at this particular time she was only averaging about eight knots; and that when she turned to go into the chase she was lying dead in the water.

Do not all these inaccuracies show that the witness's recollection is entirely too treacherous to make his opinion that the *Indiana* was in signal distance of value? He enumerates, about the middle of p. 59, Add. Rec. the very things in which his recollection is proven to be at fault, upon which to base his opinion that the *Indiana* was in signal distance.

4. MALLERY.—As basis for his opinion that vessels were within signal distance, he gives the opinion they were only 4 or 4½ miles apart. (Q. 30, p. 79, Add. Rec.) Thinks about 5 miles the longest distance one can read signals. (Q. 26, p. 81, Add. Rec.) Does not remember being able to make out colors of the Spanish flag until it was hauled down after the shot from the *Indiana*. (Q. 45, p. 83, Add. Rec.

5. PERKINS.—Saw a boat (QQ. 9–14, p. 84, Add. Rec). and at that time, with glasses, could have seen signal flags on *Mangrove* clearly enough to tell one flag from another. (Q. 20, p. 84, Add. Rec.) Is evidently talking about boat coming from *Mangrove* to *Indiana* and not from *Man-*

grove to *Panama*. (QQ. 10–14, p. 85, Add. Rec.) Did not know that *Mangrove* and *Panama* stopped at all. (Q. 16, p. 85, Add. Rec.) Says when boat went over *Mangrove* and *Panama* were a couple of miles off, or about 1½ miles. (QQ. 20–22, p. 85, Add. Rec.) That when all this occurred the sun was probably an hour high; yet when the *Indiana* fired the sun was down. (QQ. 31–33, p. 86, Add. Rec.)

6. MURRAY.—This sailor from the *Indiana*, who was on *Mangrove* when Ensign Dayton went aboard the *Panama*, says *Indiana* within signalling distance, could have signalled without any trouble. (Q. 15, p. 91, Add. Rec.) When asked what means of signalling could have been used without any trouble, says, "The Ardois system." (Q. 16, p. 91, Add. Rec.) This is a light signal, for use at night, and witness explains that it was not customary to make such signals in the day time, but it was a little hazy; that the *Indiana* could have made those signals very easily; and that it was hazy enough for the *Mangrove* to have used them (QQ. 28–33, p. 94, Add. Rec.); considered *Indiana* when Ensign Dayton went aboard *Panama* only from 4 to 6 miles away. (Q. 22, p. 91, Add. Rec.) He says even wig-wag signals could have been read, while no other witness testifies that wig-wag signals could be read as far as 6 miles; and he states he had read such signals 12 miles, though not in the navy. (QQ. 34, 35, p. 95, Add. Rec.)

7. CARLOS.—Could have read signals, because saw men on *Mangrove's* deck (Q. 12, p. 210, Add. Rec.), something that no one else saw; also saw boat; it was a whale-boat, and had from 6 to 10 people in it (Q. 4, p. 211, Add. Rec.); did not hear gun fire, but saw them working and securing a gun on the starboard side of the *Mangrove* (Q. 7, p. 209, Add. Rec.); estimates regulation signal flag in navy as only about 5 or 6 feet long; had read them about a

mile away and judged this to be distance ships were apart—from which he had read them. (Q. 6, p. 211, Add. Rec.)

8. BLACKISTON.—*Panama* and *Mangrove* 7 or 8 miles distance from *Indiana* when heard *Mangrove's* guns fired (Q. 4, p. 216, Add. Rec.); thinks flag signals could have been read, because flag signals could be discerned on Morro Castle, when *Indiana* said to be lying 7 miles off Santiago (Q. 12, p. 217, Add. Rec.); had heard guns fired 10 miles (Q. 2, p. 217, Add. Rec.); had seen boats 8 miles (Q. 3, p. 217, Add. Rec.); had read signals about 7 miles, judging from what the quartermaster and officer of the deck told him at the time (Q. 6, p. 218, Add. Rec.)

9. ABBOTT.—Had experience reading flags, no particular experience making signals. (Q. 11, p. 222, Add. Rec.) He does not wish to make statement as to reading signals at a distance. "It never has been my duty to read flag signals; I am unable to give the size of No. 1 signal flags." (Q. 6, near top of p. 224, Add. Rec.) Still believes flags might have been distinguished when boat went from *Mangrove* to *Panama*. (Q. 12, p. 222, Add. Rec.) Saw smoke of one gun. (Q. 6, p. 222, Add. Rec.) Distinguished boat afloat between two vessels with naked eye. (QQ. 9, 10, p. 222, Add. Rec.) Had seen boats at sea perhaps 10 miles, and he should judge it was about 6.30 when he saw the smoke of the gun from the *Mangrove*. (Q. 3, p. 223, Add. Rec.) Had heard guns fire at sea 9 miles. (Q. 2, p. 223, Add. Rec.) Boat he saw in water had regular crew in it, but could not swear it went from the *Mangrove* to the *Panama*. (Q. 4, p. 223, Add. Rec.)

10. LINDSAY.—Been apprentice; five months' experience signalling. (Q. 11, p. 288, Add. Rec.) When boat went from *Panama* to *Mangrove* signal flags could have been read with a glass from the *Indiana*. (Q. 12, p. 228,

Add. Rec.) Sizes of signal flags 7 feet hoisted and 9 feet flying. On clear day had read signals at distance of a mile. When first saw *Panama*, *Mangrove* about 8 miles away. (Q. 4, p. 227, Add. Rec.) Saw smoke and heard report of gun. (Q. 7, p. 228, Add. Rec.) Saw boat with naked eye. (Q. 10, p. 228, Add. Rec.) Had seen a boat 8 or 7 miles. Saw signals made by the *Mangrove* when she captured the *Panama*, but did not read them. (Q. 7, near top of p. 230, Add. Rec.)

11. COFFEE.—Not acquainted with flag signals. (Q. 11, p. 234, Add. Rec.) Thinks had flags been hoisted on *Mangrove* they could have been seen. (Q. 12, p. 234, Add. Rec.) Did not see any boat (QQ. 8, 9, p. 234, Add. Rec.) Heard a gun fired from the *Mangrove* at about 7.30. (Q. 3, p. 235, Add. Rec.) Boat went from the *Indiana* to *Panama* about 8 o'clock. (Q. 4, p. 235, Add. Rec.) Did not see the *Indiana* fire at all. (Q. 5, p. 235, Add. Rec.)

12 and 13. LEE and GEARY.—Had neither of them had experience with signalling (Q. 11, p. 240, and Q. 6, p. 242, Add. Rec.), yet state could have made out signal flags, because they made out Spanish flag 5 minutes before boat went across. (Q. 12, p. 241, Add. Rec.) These witnesses both claim also to have seen the *Mangrove* fly signals, though the *Mangrove* never made any signals. (Q. 7, p. 242, Add. Rec.) Lee says *Mangrove* only stopped a minute and the *Panama* not at all until stopped by the *Indiana* (Q. 1, p. 241, Add. Rec.), and Geary that the *Mangrove* stopped a few minutes, but does not think *Panama* stopped at all (Q. 1, p. 241, Add. Rec.), and both say it was the *Indiana* that captured the *Panama*. (Q. 7, p. 242, Add. Rec.) Their inexperience, misstatements and inaccuracies make valueless their opinions that signals could have been read and their statements that they

made out the *Panama's* flag 5 minutes before the *Mangrove's* boat went over.

14. GOLDEN.—Made out the Spanish flag with a long glass (Q. 4, p. 246, and Q. 12, p. 247, Add. Rec), but gives the size of the signal flags only at 4 x 3 feet and 3½ x 2½ to 2½ feet. (Q. 6, pp. 248, 249, Add. Rec.) Considers were in signal distance, because he could make out *Panama's* flag. (Q. 12, p. 247, Add. Rec.) Saw the smoke of two shots. (Q. 6, p. 246, Add. Rec.) Saw a boat, a whale-boat. (QQ. 8, 9, p. 247, Add. Rec.) Saw an officer, a coxswain and crew in the boat. (Q. 4, p. 248, Add. Rec.) *Panama* dropped her flag and hoisted it again at the time the *Mangrove* lowered a boat after the firing (Q. 8, p. 247, Add. Rec.), yet no one else among all the witnesses claims that the flag was lowered at that time. Captain Everett says it was not lowered. (Q. 30, p. 109, Add. Rec.) Golden's statement that he made out the Spanish flag is destroyed by his three distinct misstatements, all of which could not have been honest errors. 1st. That he was familiar with signals and that of the two sizes 4 x 3 was the larger. 2d. That there were in the boat an officer (who would sit in one end), a coxswain (who would sit in the other end) and a crew (who would sit in the middle); and 3d. That the *Panama* dropped her flag and lowered it again.

15. KIMBALL.—Acquaintance with flag signals is evidently very limited. (Pp. 252, 253, Add. Rec.) Flag signals could undoubtedly have been read. (P. 253, Add. Rec.) *Indiana* fired three shots. (P. 252, Add. Rec.) Saw boat, but did not know that he could say what kind of a boat it was. (P. 252, Add. Rec.) Boat was 28 or 30 feet long, maybe, and had 8 or 10 people, or one or two more people in it. (Near bottom of page 253, Add. Rec.)

16. MAYBAUM.—Experience with signals also very limited. (Pp. 256, 257, Add. Rec.) Could have read signals with the aid of glass. (P. 255, Add. Rec.) Saw

smoke from *Mangrove's* guns. (P. 255, Add. Rec.) Saw boat, about 15 feet long, in which there appeared to be 5 persons. (P. 257, Add. Rec.)

17. BURNS.—A signal boy. From his testimony signal boys about the only persons responsible for signals, or understanding signalling (p. 261, Add. Rec.); saw flash of guns, and boat (p. 258, Add. Rec.); could read signals 5 miles and see boat 5 miles (p. 261, Add. Rec.); signals on the *Mangrove* could have been read with binoculars.

18. MEEHAN.—Pretty sure *Mangrove* fired, but had n't got it certain; would like to swear to it, though, if he could; saw no effort of *Mangrove* to communicate with *Panama*; when *Mangrove* fired *Panama* went straight ahead and did not heave to until *Indiana* fired; saw boat in water, but did not know whether it was coming to the *Indiana* or *Panama*. Nevertheless, states when boat went from the *Mangrove* signals could have been read from *Indiana*, and knows it, because he saw the *Mangrove* hoist signals; but he could not read them, did not understand them. (Pp. 264, 265, Add. Rec.)

19. COLONEL WALLER.—Knows of signals having been read 8 miles; that is very close measurement; at that distance signals would have been distinct after a few moments, while another signal at that distance could not be made out at closer range. (QQ. 41–45, p. 269, Add. Rec.) Thinks that before gun was fired we could have read signals, certainly afterwards. That is, the ordinary expert man could do it (Q. 13, p. 267, Add. Rec.), and even hazards the opinion that an expert could have read boat flags. (Q. 40, p. 269, Add. Rec.) Considers that the *Indiana* was only 3½ to 4 miles away when the *Mangrove* and *Panama* stopped (Q. 9, p. 266, Add. Rec.), yet the distance the *Indiana* travelled after the capture, even at the slow speed this witness gives her, of 7 knots an hour, plus the distance at which he fired the gun, would

account for over 7 knots between the vessels at the time of capture, without counting the distance *Mangrove* travelled.

Following is Evidence *Contra:*

1. Two ships' towers only visible. (Q. 3, p. 7, Rec. Burgas on *Panama.*)

2. Believes *Indiana* and another ship in sight; duties demanded presence below and not prepared to state positively time we sighted the other ships. (Q. 3, p. 10, Rec. Thompson on *Panama.*)

3. Two ships in sight. (Q. 3, p. 14, Rec. Quevedo on *Panama.*)

4. No vessel in signal distance. (Q. 4, p. 22, Rec. Olssen, witness for appellee.)

5. There was no vessel in signal distance. (Q. 4, p. 23, Rec. Chipchase, for appellee.)

6. No vessel in signal distance. (Q. 4, p. 24, Rec. Ralston, for appellee.)

7. No vessel in signal distance. (Q. 4, p. 25, Rec.; qq. 24–27, pp. 184–5; q. 44, p. 186; q. 58, p. 187, Add. Rec. John Peterson, for appellee.)

8. No vessel in signal distance. (Q. 4, p. 26, Rec.; qq. 26–32, pp. 162–3; qq. 1, 6, p. 164; qq. 12–16, p. 165, Add. Rec. Hanson, for appellee.)

9. No vessel in signal distance. (Q. 4, p. 27, Rec. Clinton, for appellee.)

10. No vessel in signal distance. (QQ. 3, 4, p. 29, Rec.; qq. 16–18, p. 138; qq. 24–25, p. 139, Add. Rec. Dayton, for appellee.)

11. No vessel in signal distance. (Q. 4, p. 30, Rec. Schmitt, for appellee.)

12. No vessel in signal distance. (Q. 4, p. 31, Rec.; qq. 9–11, pp. 107–8, qq. 111–3, p. 117; q. 146, p. 120, Add. Rec. Everett, for appellee.)

13. No vessel in signal distance. (Q. 4, p. 33, Rec.; q. 3, pp. 122–3; qq. 9, 11, p. 124, Add. Rec. Palmer, for appellee.)

14. No vessel in signal distance. (Q. 4, p. 34, Rec.; q. 7, p. 172; qq. 52–57, pp. 176–7; qq. 68–72, pp. 177–8; qq. 4–13, pp. 178–9; qq. 12–23, p. 179, Add. Rec. Cosgrove, for appellee.)

15. No vessel in signal distance. (QQ. 22–26, p. 149; qq. 16–22, pp. 152–3, Add. Rec. Chase for appellee.)

16. No vessel in signal distance. (Q. 6, p. 153; qq. 41–43, p. 155; qq. 8–9, p. 156, Add. Rec. Overn, for appellee.)

17. No vessel in signal distance. (QQ. 27–32, p. 159; qq. 5–8, p. 160, Add. Rec. Charles Peterson, for appellee.)

In view of the distance between the vessels, of the failure of the *Indiana* to make any effort to signal the *Mangrove* or inability to make out the colors of the *Panama* and of the utter absence of any testimony to show what was signal distance for the boat-flags with which only the *Mangrove* could have signalled, we deem it unnecessary to discuss the many inconsistencies and conflicting statements among claimants' own witnesses, or contradictions of claimants' witwitnesses by witnesses for the appellee, such for instance as where the chaplain of the *Indiana* attributes to the captain of the *Mangrove* a deliberate refusal to look in the direction of the *Indiana* and alleges that the captain's eyesight was bad and he could not read compass bearings. Testimony relative to the chaplain's accusations may be found as follows:

Q. 41, p. 110; Q. 124, p. 118; Q. 3, p. 122; Q. 11, p. 124; Q. 27, p. 132; QQ. 34–38, p. 133, Add Rec.

Testimony relative to the captain's eyesight may be found as follows:

Pp. 44, 45, 51, 52, 143, Add Rec.

Testimony relative to the captain's inability to read compass bearings may be found as follows:

Q. 38, p. 110; QQ. 127–129, pp. 118–119; p. 123, Add Rec.

When witnesses for appellant put the *Indiana* within from 4 to 5 or 6 miles of the *Mangrove* at the time of the capture, in view of the very positive evidence of her true distance away they discredit the value of their opinions as much as those other witnesses discredit their memories when they say that they saw three port guns fire, or saw signals hoisted on the *Mangrove* when no such signals ever were hoisted; or saw 5 or 6, or 8 or 10 people in the boat.

Flag of *Panama*.

The *Panama's* flag contained the two colors most easily distinguished among the navy signal colors, red and yellow. To explain why the *Indiana*, when the flagship inquired the colors of the stranger, did not signal the *Mangrove*, Admiral Taylor, admitting that even when going to see he could have signalled without stopping, gave in one sentence three distinct reasons, which we will number: (1) "Signalling at this distance when you come near to the limit is always slow; it takes time to make out signals at that distance when you come near the limit; and (2) twilight was approaching; it was nearly sundown, as I remember; and (3) it was only natural that there should be no attempt at signalling when the vessel was approaching." (P. 69, Add. Rec.)

Of these reasons, as we interpret them, the first seems to be, that at that time and distance signalling would have been difficult. The second, that "twilight was approaching" and there was no time for experimenting. The third is, that signalling was unnecessary, because the "vessel

was approaching"; yet, as the facts show, it was deemed necessary to go at the "greatest possible speed" to see.

It would have been according to the custom of the naval service for the *Indiana*, when she could not make out the *Panama*, to have inquired of the *Mangrove*, had the *Mangrove* been considered at the time within signal distance. (See QQ. 51–54, pp. 141, 142, Add. Rec.; QQ. 51, 52, p. 129, Add. Rec.)

You are asked to assume that the *Indiana* could have read signal flags on the *Mangrove* at a time when neither the man Munson, sent up aloft to report, nor any of the officers upon the bridge with glasses could make out the colors in the Spanish flag flying from the *Panama*. The probative force of the fact that those whose duty it was to see and to signal could not see, would not be essentially weakened by proof that three others in that ship of five hundred people had really seen the colors of the *Panama*. The effort however to prove that this was the case, by Golden, Lee and Geary, has failed. They were on the deck, which is below the bridge, made no report then, or so far as the evidence shows, since, till their claim for prize money was endangered, and then accompanied their evidence on this point with other statements which, as we have pointed out, were palpably untrue. So their testimony must be set aside.

Inability to make out the flag is attempted to be explained by a generality as to the condition of brightness in which merchant vessels usually keep their flags, and Admiral Taylor thinks, from his recollection of the *Mangrove*, that her signal flags would have been hoisted higher than a flag would have been on the *Panama*. (Just below middle of page 62, Add. Rec.) The estimate of Captain Everett, who made no particular examination (Q. 140, p. 119, Add. Rec.), is that the Spanish flag was not over half the size of the large signal flags in use. Half of the

surface of an 8 x 11 flag is 44 feet as against 12 feet for the *Mangrove's* flags. The testimony, by an officer who examined this particular merchant flag, is that it was about 12 feet long and in good condition, while the signal flags the *Mangrove* carried were only about 4 feet long; and that the Spanish flag was hoisted at the mizzen gaff, at a height equal to if not higher than would have been even the topmost of the three signal flags, which in signalling would have been one above the other, if they had been hoisted on the *Mangrove* (QQ. 34–39, p. 140; QQ. 26–27, p. 125; QQ. 45–49, pp. 128–129, Add. Rec.)

We think it fairly inferable from all the evidence that though the *Indiana* before and after the capture was approaching the *Panama*, and for the express purpose of finding out what vessel she was, she never made out that she carried a Spanish flag until just about the time the shot from the *Indiana* was fired. Whether the discovery of the Spanish flag was the prime, or only a secondary, cause of the order to fire, at 6.45, is quite immaterial. If the discovery was only a contributing cause, as we admit on Admiral Taylor's statement, the inference still is, as the other evidence indicates, that the discovery had just been made; and that is our point.

The evidence bearing on this point is to be found as follows: Q. 9, p. 4, and QQ. 347, 348, p. 40, Add. Rec.—Captain Dawson. At the bottom of page 61, Add. Rec.; near bottom of page 70—Admiral Taylor. QQ. 16–18, p. 124, Add. Rec.—Ensign Palmer. QQ. 44–48, pp. 140, 141, Add. Rec.—Lieutenant Dayton.

The Attorney-General's Brief.

The Government's brief has reached us since the printing of the first portion of our argument. Its first proposition is, the *Mangrove* was superior in force to the *Panama*.

The brief notes that six officers testified to the superiority of the *Mangrove*, several of them since the decision of the court below declaring emphatically that the *Panama* was the superior, and also that the Prize Commission so decided; but it is argued that notwithstanding all this concurring testimony the decision of the court below on this question of fact should be reversed, because "the surrounding facts are the essential part of the problem." Some of these facts are, that the *Panama* was a 12-knot ship and the *Mangrove* an 8-knot vessel, and the *Panama* could easily have escaped. (Dayton, Q. 80, p. 144, Add. Rec.) Also that the *Panama* was a very much larger vessel, from which it would appear that she could, by her superior weight and speed, have easily run down the *Mangrove*.

Reference is made to the original case of the *Panama* before this court, 176 U. S. 535. We also rely on that case, from which it appears that the *Panama* was a part of the Spanish naval reserve, just as the *St. Paul* and other vessels are of ours, the material difference being this: Our naval reserve vessels are not required to carry any specific armament. The *Panama* was, and she carried, not a merchant, but a man-of-war flag (Q. 3, p. 146, Add. Rec.). It was her armament, specified by the Spanish Government, that made her superior to the *Mangrove*. This court, p. 539, citing the contract between Spain and the owners of the *Panama*, says:

"By Article 35, the vessels, with their engines, armament and other appurtenances, must be constantly maintained in good condition for service.

"By Article 41, the officers and crew of the vessels, and as far as possible the engineers, shall be Spaniards."

Engineers in the Spanish naval service are frequently foreigners, because of the difficulty of procuring competent engineers in Spain, so that these two articles place

assimilated *pro tanto*, vessels of the Spanish regular navy and of their reserve navy. The requirement that the crew shall be Spaniards and that they shall carry a specified armament, in good condition, can only mean that these Spaniards shall use this armament when occasion demands. The Spanish Government in making this contract could not have contemplated that a vessel belonging to their reserve navy should surrender to an inferior force of an enemy in time of war without resistance.

In the same opinion, p. 546, this court says, when considering the case of this armed vessel:

"Yet it must be admitted that arms and ammunition are not contraband of war when taken and kept on board a merchant vessel as a part of her equipment and solely for her defense against 'enemies, pirates and assailing thieves,' according to the ancient phrase still retained in policies of marine insurance."

After fully discussing this point, which had been raised, by the plaintiffs, the court, on p. 549, near the conclusion of its opinion, says:

"She was, then, enemy property, bound for an enemy port, carrying an armament susceptible of use for hostile purposes and herself liable, upon arrival at that port, to be appropriated by the enemy to such purposes."

If she had such armament, susceptible of use for hostile purposes, and a crew of Spaniards who were presumptively familiar with and able to use this armament, it is not easy to see how the Government can profit now by this decision.

We refer back to our brief, under the head of "Relative Force," pp. 2–6, inclusive, for a discussion in part of other points made in the Government's brief.

The English cases cited by the Government show that the English rule was to allow ships to share not only on

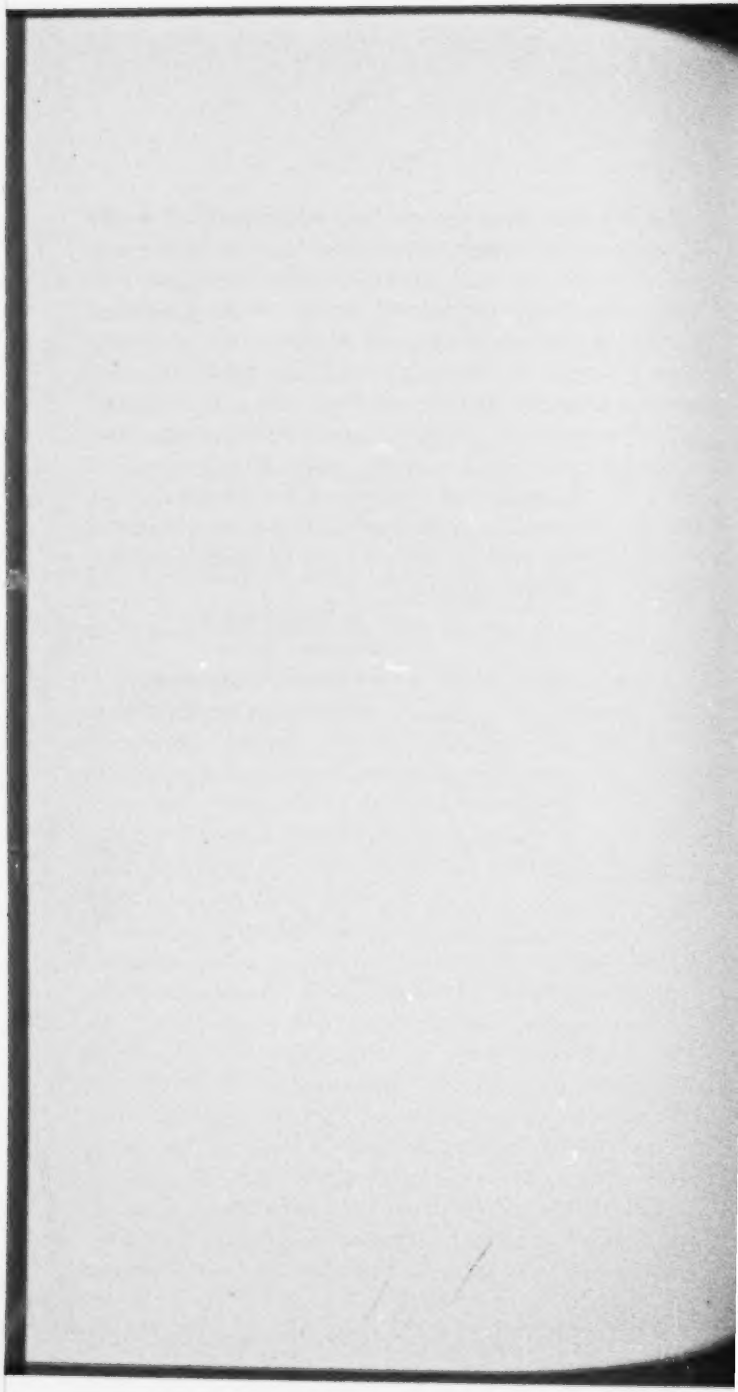
the idea of associated effort but also of constructive assistance. The three progressive changes made by our statutes, as shown in the following citation of the Government's brief, seem to us to indicate in the clearest possible manner the intention of Congress to change the English rules and to fix a definite and rigid statutory rule from which we can not see how our courts could conceive themselves at liberty to depart.

"The phrase of the act of 1800 (par. VII, section 6, act April 23, 1800, 2 Stat. 45, 53) was 'in sight;' that of the act of 1862 was 'within signal distance' (act July 17, 1862, 12 Stat. 606, sec. 3, par. 4); that of the present law (act June 30, 1864, sec. 4632, R. S.) is 'within signal distance * * * under such circumstances and in such condition as to be able to render effective aid if required.'"

To share with the *Mangrove*, which is in this case admittedly the captor, under the statute of 1800, it would have been sufficient for the *Indiana* to be "in sight." Under the act of 1862 she must have been "within signal distance." Some of the decisions quoted by the Government indicated a disposition to hark back to the English rule of constructive assistance, and therefore the act of 1864 provided more definitely still that in order to share the *Indiana* must have been "within signal distance under such circumstances and in such condition as to be able to render effective aid if required." The words "if required" are important. No fair construction of this statute could allow the court in this instance to infer from the fact that the officers of the prize testified that two other warships were "in sight" at the time of the surrender to the *Mangrove*, that the prize therefore was intimidated into a surrender, and hence that the *Indiana* was a joint captor. There is no evidence whatever *of the fact which such a construction of the testimony assumes.* The court below decided against this construction of the evidence and found as

a fact that the *Mangrove* was the sole captor. For the appellate court to reverse this decision now on such a ground would be a reversal without the convincing evidence which this court always requires of an appellant. It would also be a setting aside of the act of 1864. To make this clear, let us suppose that the *Mangrove* could have signalled and had signalled for assistance; that the *Indiana* being out of range had replied, "Can not come because aground"; and that thereupon, after a desperate battle the *Mangrove* had conquered and captured the *Panama*. Evidently the *Indiana* would not share, because she was not "in such condition as to be able to render effective aid *if required*."

H. A. HERBERT,
BENJAMIN MICOU,
JEFFERSON B. BROWNE,
Proctors for Appellee.



Supreme Court of the United States.

Nos. 24 and 34.—October Term, 1902.

24. The United States, Appellant, vs. The Officers and Crew of the U. S. S. Mangrove.	Appeals from the District Court of the United States for the Southern District of Florida.
34. The Officers and Enlisted Men of the U. S. Ships New York, Indiana and Wilmington, Appellants, vs. The Officers and Crew of the U. S. S. Mangrove.	

[February 23, 1903.]

Mr. Justice Holmes delivered the opinion of the Court.

These are appeals from a decree of the United States District Court distributing the proceeds of the Spanish steamer Panama, condemned by an earlier decree as prize of war. 176 U. S. 535. The District Court awarded the whole net proceeds to the officers and crew of the United States steamer Mangrove, on the ground that the Mangrove was the sole capturing vessel, that the prize was of superior or equal force, and that no other vessel was within signal distance. U. S. Rev. Stat. § 4630, (repealed by Act of March 3, 1899, c. 413, § 13, 30 Stat. 1007,) § 4632. The United States appeals, contending that the Mangrove alone was of force superior to the Panama, and also that the Indiana, Wilmington and New York were within signal distance, and that the Indiana at least was a joint captor, and that therefore, by § 4630, one-half the proceeds should go to the United States. The Indiana appeals, taking the ground that the Mangrove was the sole captor and of force inferior to the Panama, but that the Indiana was within signal distance and in such condition as to be able to render effective aid if required, and therefore entitled to share in the prize by § 4632. The New York and the Wilmington appeal on like ground.

The case turns upon findings of fact, and the question is whether it is clear that the District Court and the experienced naval prize commissioner were wrong. *The Grace Girdler*, 7 Wall. 196, 204. But of course we do not leave out of sight the fact that much additional evidence has been put in since the trial below. We take up first the case of the Indiana. Without discussing the details of the contradictory testimony, we will state the facts that seem to us proved.

At seven minutes after six in the evening of April 25, 1898, off Havana, the Panama, having been brought to by a shot across her bow and notice

that she would be fired into if she did not stop, was boarded by Ensign Dayton from the Mangrove. At this moment the capture was complete. *The Grotius*, 9 Cranch, 368, 370. The Panama did not attempt or, so far as appears, intend, resistance or escape. The captain was told that he was a prize, war having been declared between the United States and Spain, and he acquiesced. Thereafter the Panama proceeded, with Ensign Dayton on board, under orders from the Mangrove. Her colors were not hauled down, or a prize crew put aboard until later, but under the circumstances these facts seem to us controlled by others which we have mentioned. It may be added that the officers of the Mangrove seem to have considered it usual for prizes to fly their ensign until they were adjudicated by the prize court, which would account for their not ordering the flag lowered.—Thirty-eight minutes later, at forty-five minutes after six, the Indiana, which had been approaching from an opposite direction, fired a shot across the bow of the Panama and sent a prize crew aboard. (We should remark in passing that this crew was subject to the orders of Ensign Dayton, the prize master, and seems to have been put aboard at the request of the Mangrove, which had not men enough to spare.) The officer who fired the gun says that he estimated the range at forty-five hundred yards, and that the shot being accurate, the distance from the Panama was about forty-eight hundred yards. This was the estimate formed by the expert on the spot, at the time, for purposes of immediate action, when it was necessary to be accurate. Whatever it was, it was verified by the result of the shot, so that really the only question is whether it is remembered correctly, which there is no reason to doubt. It seems to us to outweigh all other estimates formed after the event by witnesses who had no similar duty. At this time the Mangrove was abreast or a little astern of the Panama.

The previous situations of the ships were as follows: All the United States vessels concerned in this cause were on blockade off Havana. At 4.30 P. M. the Indiana signaled the Mangrove and gave her orders to proceed to Key West after receiving mail. The Mangrove started for Key West before five. At five or ten minutes after five, and until 5.48, when her speed slackened, the Indiana went ahead at full speed toward the flagship New York, in an almost opposite direction from that taken by the Mangrove. At a quarter past five she sighted a strange vessel, which turned out to be the Panama, to the northeast. At 5.52 the flagship signaled "What colors does strange vessel carry?" and was answered at 5.55 "Cannot see." At about six the Indiana was turned toward the Panama and went at full speed, and later at best speed possible until 6.45, when she fired the shot and stopped. The Indiana when she turned at six did not attempt to signal the Mangrove, and five minutes earlier could not see the colors of the Panama, although the Spanish flag was three times the

size of the Mangrove's signal flag. It appears from the steam log of the Indiana that a few days later she made 10.15 knots per hour for two consecutive hours. Taking the time during which the Indiana and Mangrove had been moving away from each other, and their probable speed, or, again, taking the distance at which the Indiana was from the Panama and Mangrove when she fired her shot, and the fact that she had been making for them at full speed for the greater part of forty-five minutes, while they during a part of the same time were sailing toward her at a rate of eight knots, we think it probable, without going into nice calculations, that at six o'clock she must have been twelve or fifteen miles away at the least, as was found by the District Court. From six, when she turned, to seven minutes past six, when the Panama was taken, the Indiana cannot have got to full speed or gone far. The Panama had been stopped.

There is much testimony that the capture was seen from the Indiana, while the officers of the Mangrove say that the Indiana could not be seen by them. We do not attempt to determine precisely how much could be seen or was seen from the higher ship. That testimony must reconcile itself as best it may with the foregoing facts, which we deem not open to dispute. And on those facts we are of opinion that the Indiana was not within signal distance of the Mangrove when the capture took place. We agree with the counsel for the appellees that this view is confirmed by the log of the Indiana and by her claim as first filed, which indicates that at that time her rights were supposed to be founded on the shot fired by her, and the hauling down of the Panama's colors thereupon. It is unnecessary to advert to further confirmatory details.

We need not consider whether, in order to bring a claimant within signal distance, mutual communication must be possible, or whether it is enough if signals from the vessel making the capture could be seen by the claimant. Taking it the latter way, still the words "within signal distance" must be read in connection with the further words "under such circumstances and in such condition as to be able to render effective aid, if required." The whole sentence refers to the actual conditions of this particular case, not to an abstract objective criterion of ideal signal distance in general. See *The Ella and Anna*, 2 Sprague, 267, 273; *S. C.*, 8 Fed. C. No. 4368. The Mangrove had no signal flags but boat flags, about three feet by four, the usual signal flags being about eight feet by eleven. Under such circumstances we think it probably would be safe to assume five miles as an outside limit of signal distance in this instance, if the facts heretofore found by us rendered it necessary to be so nice. It is argued, to be sure, that gun signals would have been possible. As to this suggestion we deem it enough to say that we see no reason to believe that it was a practical working possibility under the circumstances, and therefore need not consider whether this statute would be satisfied by any-

thing less than the possibility of reading the ordinary day signals, in the case at bar.

The claims of the New York and the Wilmington fall with that of the Indiana. If she was not within signal distance of the Mangrove they were not, and, as we are about to show, can make no claim on the ground that the Indiana was a joint captor and that they were within signal distance of her.

A part of the argument for the United States also is disposed of by what we have said. If none of the other vessels were within signal distance of the Mangrove none of them were "vessels making the capture" within the meaning of § 4630. The phrase must be taken to be used in that section in the same sense in which it is used in § 4632, where it is opposed to vessels within signal distance and is defined as meaning "vessels present at and rendering actual assistance in the capture." It cannot be contended that vessels too far away to share in the prize as being within signal distance can share under the more immediate title of vessels making the capture, on the ground of some more remote contribution to the result. Vessels within signal distance and able to render effective aid are let in, it is true, presumably because they are taken to contribute to the result, but a more remote contribution is excluded. See *The Cherokee*, 2 Sprague, 235; *The Atlanta*, 2 Sprague, 251; *S. C.*, 3 Wall. 425; *The Lee and Anna*, 2 Sprague, 267; *S. C.*, 8 Fed. C. No. 4368, and n.

It follows that these vessels cannot be taken into account in estimating the relative force of captor and prize. Undoubtedly it is likely that the Panama must have known when it left New York that war and a blockade of Havana were probable, and when it was stopped by the Mangrove, whatever it saw or did not see, it may have conjectured that other vessels were not far off. But, as we have said, these less immediate influences are laid out of account by the act.

We may admit with regard to the question just discussed and that to which we now address ourselves, that it is impossible not to feel that the prize law had in mind a different kind of case from this. To catch a blockade runner or a vessel not even informed of the blockade, in either case a vessel not expecting to fight and having shrewd ground to believe that to do so would be to bring down upon herself an overwhelming force, is not the desperate venture which the statute was framed to encourage. But some rather weak cases must fall within any law which is couched in general words. There is no denying that the Panama was of force superior to the Mangrove. She was of 1,432 tons register, with a crew of seventy-one. She had substantially what was required by her contract as a mail steamship with the Spanish government, viz., two Hontoria nine centimetre guns with thirty round of shot for each, one Maxim gun on the bridge, two signal

guns, twenty Remington rifles and ten Mauser rifles, all with ammunition, also bayonets and swords. The Mangrove was a steel screw lighthouse tender of not more than eight hundred tons, with a crew of thirty men, and with two six-pound guns, and no small arms or cutlasses. The Panama also was the much faster boat of the two.

The Panama's armament was taken on board under contract with the Spanish government for her own defense, and was fit for hostile use. 176 U. S. 548, 549. We must assume that if the master had thought that there was a fair chance of success, he would have shown fight. The fact that he did not, and that he probably had made up his mind not to before he saw the Mangrove, and therefore was not ready for action at the moment, does not change the result. If we cannot take the blockading squadron or the battleship Indiana in account as part of the capturing force, we cannot take them into account as motives. If the master was a timid man, who would not have dared to fight under any circumstances, there would have been the same certainty of surrender to one who knew the whole situation, but the law would have looked only to the force, and would not have gone into psychology. It would not matter that, because of his timidity, the breech blocks of the guns were left stowed below. If he had the materials for resistance and the chance to use them, that is as far as the law would inquire. So here. As was said by Judge Sprague, we must "consider the means the vessels possessed, and not the use they made of them." *The Atlanta*, 2 Sprague, 251, 258. The adventure of the Mangrove may not have been a brilliant event that will live in story, but it was sufficient to give its officers and crew the profit of the law. It is decided that the Panama was lawful prize, and the case does not fall within the class in which the United States takes half.

Decree affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.